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No. 00-927

IN THE SUPREME COURT OF THE UNITED STATES

Elaine L. Chao, Secretary of Labor,

Petitioner,

v.

Mallard Bay Drilling, Inc.,

Respondent.

On Writ of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF AMICUS CURIAE THE AMERICAN WATERWAYS OPERATORS IN SUPPORT OF RESPONDENT

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TABLE OF CONTENTS

I. INTERESTS OF AMICUS CURIAE AMERICAN WATERWAYS OPERATORS 1

II. SUMMARY OF ARGUMENT 2

III. ARGUMENT 4

A. THE RECORD BELOW DEALT WITH MALLARD BAY'S DRILLING RIG, NOT WITH UNINSPECTED TUGS AND BARGES OF THE TYPES OPERATED BY AWO'S MEMBERS, AND HENCE THAT RECORD IS INSUFFICIENT TO SUPPORT APPLYING THE OSH ACT TO ALL UNINSPECTED VESSELS GENERALLY. 5

B. THE COAST GUARD EXERCISES STATUTORY AUTHORITY OVER UNINSPECTED TUGS AND BARGES WITH RESPECT TO WORKPLACE SAFETY 7

1. Coast Guard regulations "affect[] occupational safety and health" within the meaning of Section 4(b)(1) by requiring uninspected vessels of the types operated by AWO members to be constructed safely. 7

2. Coast Guard regulations "affect[] occupational safety and health" within the meaning of Section 4(b)(1) by requiring uninspected vessels of the types operated by AWO members to have safety equipment. 9

3. Coast Guard regulations "affect[] occupational safety and health" within the meaning of Section 4(b)(1) by requiring uninspected vessels of the types operated by AWO members to be manned by crew members who are qualified and whose hours of work are regulated. 11

4. Coast Guard regulations "affect[] occupational safety and health" within the meaning of Section 4(b)(1) by requiring uninspected vessels of the types operated by AWO members to utilize practices and procedures that promote workplace safety. 12

C. THE COAST GUARD ACTIVELY REGULATES WORKPLACE SAFETY ON UNINSPECTED TUGS AND BARGES 14

D. OSHA REGULATION OF UNINSPECTED VESSELS OF THE TYPES OPERATED BY AWO'S MEMBERS WOULD BE UNWORKABLE, BECAUSE THOSE VESSELS SAIL "IN AND OUT OF [OSHA'S] COVERAGE." 18

E. EMPLOYEES ON UNINSPECTED VESSELS OF THE TYPES OPERATED BY AWO'S MEMBERS ARE PROTECTED BY LONG-STANDING RULES OF SUBSTANTIVE LAW THAT ASSURE WORKPLACE SAFETY, WITHOUT OSHA REGULATION. 21

F. THE RESULT SOUGHT BY PETITIONER WOULD TREAT ALL UNINSPECTED VESSELS AS IF THEY WERE THE SAME, THUS INAPPROPRIATELY CREATING AN INDUSTRY-WIDE NON-EXEMPTION FROM OSHA REGULATION. 22

IV. CONCLUSION 24

TABLE OF CITED AUTHORITIES

CASES

Berkovitz v. United States, 486 U.S. 531 (1988) 6

Brown v. Socialist Workers '74 Campaign Committee, 459 U.S. 87 (1982) 5

Browning-Ferris Industries v. Kelco Disposal, 492 U.S. 257 (1989) 6

Cowgill v. California, 396 U.S. 371 (1970) 6

Donovan v. Red Star Marine Services, Inc., 739 F.2d 774 (2d Cir. 1984) 20

Donovan v. Texaco, Inc., 720 F.2d 825 (5th Cir. 1983) 18, 21

Herman v. Tidewater Pacific, Inc., 160 F.3d 1239 (9th Cir. 1998) 19, 20

Hopson v. Texaco, 383 U.S. 262 (1966) 22

In re Inspection of Norfolk Dredging Co., 783 F.2d 1526 (11th Cir. 1986) 20

Mahnich v. Southern Steamship Co., 321 U.S.96 (1944) 21

Mallard Bay Drilling, Inc. v. Herman, 212 F.3d 898 (5th Cir. 2000) 3

Mitchell v. Oregon Frozen Foods Co., 361 U.S. 231 (1960) 6

STATUTES

Jones Act, 46 U.S.C. § 688 21

Federal Employers' Liability Act, 45 U.S.C. § 51 et seq 21

29 U.S.C. § 653(b)(1) ..... *passim*

33 U.S.C. § 151 4

46 U.S.C. § 2101(43) 1, 4
46 U.S.C. § 3301 4
46 U.S.C. § 3302 4
46 U.S.C. §§ 4101-06 4
46 U.S.C. § 4102(a) 4, 5
46 U.S.C. § 8104 11

REGULATIONS AND RULES

33 C.F.R. 164.72 10
33 C.F.R. 164.74 ..... 12, 13
46 CFR Part 7 ..... 4, 9, 10, 11
46 C.F.R. 7.1 - 7.180 11
46 C.F.R. 15.103(a) 10
46 C.F.R. 15.705 11
46 C.F.R. 16.210 11
46 C.F.R 16.230 11
46 C.F.R. 16.240 11
46 C.F.R. 16.401 12
46 C.F.R. 24.03-5 7
46 C.F.R. 25 9
46 C.F.R. 26.03-2 ..... 6, 12
46 C.F.R. 27.101 10
46 C.F.R. 27.245 ..... 6, 12
46 C.F.R. 27.300-355 10
46 C.F.R. 27.340(f) 10
46 C.F.R. 42.09 8
46 C.F.R. 42.09-15 7
46 C.F.R. 42.09-25(a) 7, 8
46 C.F.R. 42.15-10(b) 8
46 C.F.R. 42.15-40(c) 8
46 C.F.R. 42.15-70(f) 8
46 C.F.R. 42.15-75(d) 8
46 C.F.R. 15.705 11

OTHER AUTHORITIES

65 Fed. Reg. 66941 (Nov. 8, 2000) 14
U.S. Coast Guard 1999 Annual Report 14, 15, 16, 17

This brief is filed by The American Waterways Operators (AWO) as *amicus curiae* in support of the position of Respondent Mallard Bay Drilling, Inc.[1] AWO submits this brief with the written consent of all parties, which accompanies this brief at Appendix 1a-2a. *See* Sup. Ct. R. 37(3)(a).

I. INTERESTS OF *AMICUS CURIAE* AMERICAN WATERWAYS OPERATORS

AWO is the national association representing the tugboat, towboat and barge industry in the United States. AWO's 375 member companies operate thousands of tugs, towboats, and barges, most of which are "uninspected vessels" within the meaning of 46 U.S.C. § 2101(43), and many of which operate both inside and outside the territorial waters of any State. Those vessels are already regulated by the United States Coast Guard, but would also be regulated by the Occupational Safety and Health Administration ("OSHA") if this Court accepted Petitioner's invitation to hold that the Occupational Safety and Health Act of 1970 ("OSH Act" or the "Act") applies to all uninspected vessels.

AWO members include transporters of bulk commodities and oil, ship docking and harbor services providers, fueling, bunkering, and lightering services operators and shipyards. For over fifty-seven years, AWO has worked to promote a better understanding of the unique nature of the domestic waterborne transportation industry and its safe and environmentally sound contribution to the U.S. economy. In 1995, AWO and the Coast Guard entered into a written agreement establishing the Coast Guard-AWO Safety Partnership[2] illustrating the shared commitment of the Coast Guard and AWO to

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[1] Counsel for *amicus curiae* AWO authored this brief in its entirety. No person or entity other than AWO provided monetary support for the preparation or submission of this brief. *See* Sup. Ct. R. 37.6.

[2] *See* "United States Coast Guard and American Waterways Operators Outline of Quality Partnership for Marine Safety and Environmental Protection" dated September 19, 1995, copy attached as App. 3a-5a.

"ensur[ing] the safety of U.S. waters, vessels and crews." *Id.* at App. 3a.

The U.S. barge and towing industry is a diverse and vital segment of America's interstate transportation system. Barges and towing vessels make nearly one million voyages annually from over 2,000 bulk cargo docks and terminals. The industry operates approximately 5,000 tugs and towboats and more than 25,000 barges, which contribute more than $5 billion a year to the nation's economy.

Tug and barge transportation provides America's shippers with a highly cost-efficient and reliable means of moving the raw materials that fuel the nation's economy. Indeed, barges move fifteen percent of our nation's freight for less than two percent of the nation's total freight bill. The economic efficiency of barge transportation is matched by its energy efficiency. In fact, barging is America's most energy efficient mode of surface transportation. One gallon of fuel will move a ton of cargo more than 500 miles by tug and barge.

The U.S. tug and barge industry is committed to providing safe working conditions for its employees. In addition to the Safety Partnership mentioned above, the industry has worked closely with the U.S. Coast Guard to upgrade regulatory standards in such key areas as towing vessel operator qualifications and navigation equipment on towing vessels. That commitment is also demonstrated by industry-driven safety initiatives like the AWO "Responsible Carrier Program," a code of safe practices for tug and barge companies, with which all AWO members comply as a condition of association membership.

II. SUMMARY OF ARGUMENT

AWO respectfully submits that Petitioner's statement of the issue before the Court is overly broad, and invites the Court to decide questions not properly presented in the record below. OSHA's jurisdiction cannot depend simply upon whether a vessel is classified as "uninspected," because uninspected vessels are not all the same. The Coast Guard regulates uninspected tugs and barges

operated by AWO members differently than it regulates the uninspected drilling rig operated by Respondent Mallard Bay. The record below concerns Mallard Bay's drilling rig, not the tugs and barges operated by AWO's members, even though both types of vessels are "uninspected."

AWO agrees with Respondent that, for the reasons relied upon by the Fifth Circuit, there is an industry-wide exemption for "working conditions of seamen on vessels in navigation," *Mallard Bay Drilling, Inc. v. Herman*, 212 F.3d 898, 900 (5th Cir. 2000). Even if there were no industry-wide exemption, however, the OSH Act does not apply to uninspected tugs and barges because the Coast Guard has "exercise[d] statutory authority," 29 U.S.C. § 653(b)(1), over such vessels through a comprehensive set of regulations. These comprehensive Coast Guard regulations assure safe and healthful working conditions aboard uninspected tugs and barges.

At a minimum, the record before this Court is insufficient to support a general rule that the OSH Act applies to all uninspected vessels. Rather, the lower court should determine whether the Act applies based on an evaluation of the specific Coast Guard regulations applicable to the particular uninspected vessel and workplace at issue. As Petitioner itself states: "The working conditions at issue are the conditions faced by employees on an uninspected vessel engaged in oil drilling operations on inland waters – in particular, the risk of explosion caused by the presence of natural gas in the atmosphere of the vessel." Pet. Brief at 31, (emphasis added).[3] AWO respectfully submits that the Court should affirm the decision below, or remand with instructions to determine

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[3] AWO respectfully submits that the description of the Question Presented contained in Petitioner's Brief – "[w]hether the United States Coast Guard has 'exercise[d] statutory authority . . . concerning the 'working conditions of employees' . . . on 'uninspected vessel[s]'" Pet. Brief at (I) – is inconsistent with the above-quoted statement and other such statements by Petitioner regarding the specific and limited working conditions at issue in this case. *See also* Pet. Brief at 12. The Question Presented by Petitioner is overly broad and invites the Court to decide questions not properly developed in, or presented by, the record below. *See* discussion at page 5.

whether the Coast Guard has exercised sufficient authority with respect to the specific vessel at issue in this particular case – Mallard Bay's drilling rig – without regard to whether the Coast Guard exercises sufficient authority with respect to uninspected vessels as an undifferentiated group.

III. ARGUMENT

Most of the tugs and barges operated by AWO's members are uninspected vessels within the meaning of 46 U.S.C. § 2101(43) and 46 U.S.C. § 3301.[4] Tugs over 300 gross tons operating beyond the Boundary Line[5] are inspected because they are classified as "seagoing motor vessels," 46 U.S.C. § 2101(33), but most tugs are under 300 gross tons or operate inside the Boundary Line, rendering them "uninspected." "Seagoing barges" are inspected vessels if they are manned or if they carry hazardous material as cargo or if they carry flammable or combustible liquids in bulk. 46 U.S.C. § 3302(m). Most barges are unmanned and do not carry these types of cargo, and hence most are uninspected vessels.

Petitioner correctly points out that all types of uninspected vessels, including both Mallard Bay's drilling rig and the uninspected vessels operated by AWO's members, are regulated by the Coast Guard. Petitioner attempts to minimize the Coast Guard's regulation of Mallard Bay's drilling rig, but in fact 46 U.S.C. §§ 4101-06:

- prescribe the number, type, and placement of fire extinguishers on the rig, 46 U.S.C. § 4102(a);
- prescribe the number and type of life preservers on the rig, 46 U.S.C. § 4102(b);

[4] 46 U.S.C. § 3301 lists fourteen categories of vessels that are "subject to inspection," subject to certain exceptions listed in 46 U.S.C. § 3302. The fourteen categories are in turn defined in 46 U.S.C. § 2101.

[5] The Boundary Line is a line established pursuant to 33 U.S.C. § 151 not more than twelve miles offshore. 46 U.S.C. § 2101(3). *See also* 46 CFR Part 7.

- require flame arrestors, backfire traps or similar devices on the rig's carburetors, 46 U.S.C. § 4102(c);
- require ventilation of the rig's engine bilges and fuel tank compartments, 46 U.S.C. § 4102(d); and
- prescribe the number and type of alerting and locating equipment, including emergency position indicating radio beacons, that must be on the rig (if it operates beyond three miles from shore), 46 U.S.C. § 4102(e).

Petitioner also briefly acknowledges, but attempts to gloss over, the numerous other Coast Guard regulations that apply to some categories of uninspected vessels, including tugs and barges of the types operated by AWO's members. See Brief for Petitioner at notes 1 and 13. Examination of those and other regulations demonstrates that, with respect to tugs and barges, the Coast Guard clearly has, and exercises, "authority to prescribe or enforce standards or regulations affecting occupational safety or health." 29 U.S.C. § 653(b)(1). See discussion below at pages 7 – 18.

A. The record below dealt with Mallard Bay's drilling rig, not with uninspected tugs and barges of the types operated by AWO's members, and hence that record is insufficient to support applying the OSH Act to all uninspected vessels generally.

The record below concerned Mallard Bay's drilling rig, not uninspected tugs and barges of the types operated by AWO's members. Neither the Occupational Safety and Health Review Commission ("OSHC" or the "Commission") nor the court below had any reason to consider the Coast Guard's authority over workplace safety on uninspected tugs and barges. Hence the record before this Court does not include "data and arguments adequate to inform the Court's judgment"[6] about all uninspected vessels.

[6] *Brown v. Socialist Workers '74 Campaign Committee*, 459 U.S. 87, 106 (1982) (Blackmun, J., concurring in part and concurring in the judgment) (relating to significant constitutional questions).

Accordingly the Court should decline Petitioner's invitation to announce a general rule of law applicable to all uninspected vessels.[7]

The record below shows that OSHA cited Mallard Bay for "failing to timely evacuate employees on board the drilling rig . . . failing to develop and implement an emergency response plan to handle anticipated emergencies . . . and failing to train employees in emergency response."[8] Although not part of the record before the OSHC or the Fifth Circuit, Coast Guard regulations do require uninspected tugs to meet training, safety, and emergency response standards that include monthly safety drills, monthly safety instruction, and a safety orientation program for all new crew members, 46 CFR 27.245 (relating primarily to fire emergencies), as well as emergency instructions as required by 46 CFR 26.03-2. See discussion beginning at page 12, below. On uninspected tugs, therefore, the Coast Guard clearly "exercise[s] statutory authority to prescribe or enforce standards or regulations," 29 U.S.C. § 653(b)(1), pertaining to hazards like those for which Mallard Bay was cited by OSHA.

In the proceedings below, there was obviously no reason for the parties to develop facts related to tugs. However, the absence of a record concerning Coast Guard regulation of uninspected tugs means that the record before this Court is an insufficient basis to accept Petitioner's invitation to hold that the OSH Act applies to all

[7] *Id.* *See also Browning-Ferris Industries v. Kelco Disposal*, 492 U.S. 257, 278 (1989) (declining to "attempt to decide the question in the absence of a record"); *Berkovitz v. United States*, 486 U.S. 531, 545 (1988) ("Given that these regulations are particularly abstruse, we hesitate to decide the question on the scanty record before us"); *Cowgill v. California*, 396 U.S. 371 (1970) (Harlan, J. concurring) ("I would therefore dismiss this appeal based on the inadequacy of the record for deciding the question presented"); *Mitchell v. Oregon Frozen Foods Co.*, 361 U.S. 231 (1960) (dismissing certiorari as improvidently granted "in view of ambiguities in the record as to the issues sought to be tendered").

[8] *Secretary of Labor v. Mallard Bay Drilling, Inc.* (OSHRC Docket No. 97-1973), reprinted at Pet. App. 9a.

uninspected vessels.[9] The question presented by the record in this case is limited to Mallard Bay's drilling rig, not all uninspected vessels.

B. The Coast Guard exercises statutory authority over uninspected tugs and barges with respect to workplace safety.

The Coast Guard's regulations concerning the occupational safety and health of employees on uninspected vessels of the types operated by AWO's members fall into four general areas: safe construction, safe equipment, safe crewing, and safe practices. Taken together, these regulations are precisely the type of comprehensive "exercise [of] statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health" that Congress intended would preclude OSHA jurisdiction under Section 4(b)(1).

1. Coast Guard regulations "affect[] occupational safety and health" within the meaning of Section 4(b)(1) by requiring uninspected vessels of the types operated by AWO members to be constructed safely.

All vessels, including uninspected vessels, that are over 150 gross tons and that are engaged in coastwise, intercoastal, or foreign voyages must have a load line. 46 CFR 24.03-5. Many of the tugs and barges operated by AWO members meet these requirements and hence have load lines. In order to obtain a load line, a vessel must be surveyed, and it must be re-surveyed at least every five years. 46 CFR 42.09-15. As part of the survey, the vessel must be placed in drydock, 46 CFR 42.09-25(a), and the surveyor must examine at least the following items, all of which help to assure the "occupational safety or health" of workers on the vessels within the meaning of Section 4(b)(1):

- "all means of protection provided for openings, such as for ventilators," 46 CFR 42.09-25(b)(2);

[9] *See* cases cited at note 7.

- "all guardrails, bulwarks, gangways and freeing port shutters, including securing devices, and bars," 46 CFR 42.09-25(b)(7);
- fittings for deck lashings, "including . . . protective devices as may be necessary for ventilators and steering arrangements," 46 CFR 42.09-25(b)(8);
- "all gangways, cargo ports, and airports," 46 CFR 42.09-25(b)(6); and
- air-pipe outlets, scuppers, and sanitary discharges in the vessel's sides, 46 CFR 42.09-25(b)(4).

In addition, other regulations prescribe standards for various parts of the vessel as follows:

- Openings in the bulwarks shall be protected by rails or bars spaced approximately 9 inches apart. 46 CFR 42.15-70(f).
- The height of sills of doorways and of access openings in bulkheads is specified for various portions of the vessel. 46 CFR 42.15-40(c), 42.15-10(b).
- "Satisfactory means (in the form of guard rails, life lines, gangways or underdeck passages, etc.) shall be provided for the protection of the crew in getting to and from their quarters, the machinery space and all other parts used in the necessary work of the vessel." 46 CFR 42.15-75(d).
- "Efficient guard rails or bulwarks must be fitted on all exposed parts of the freeboard and substructure decks." 46 CFR 42.15-75(b) (specifying height of bulwarks or guard rails above the deck and the spacing of the rails).

Thus the load line requirement assures (albeit indirectly) that uninspected vessels are constructed and maintained to standards that "protec[t] the crew." 46 CFR 42.15-75(d).

2. Coast Guard regulations "affect[] occupational safety and health" within the meaning of Section 4(b)(1) by requiring uninspected vessels of the types operated by AWO members to have safety equipment.

In addition to the safety standards for vessel construction required by the load line requirements of 46 CFR 42.09, Coast Guard regulations also prescribe in detail various items of safety equipment that tugs such as those operated by AWO members must have on board, even though the tugs are uninspected vessels. For example, 46 CFR 25:

- prescribes the types of life preservers and ring life buoys that must be on board, §25.25-5, how they are to be marked, §25.25-7, and how they are to be stored, §25.25-9;
- requires life preservers to have an approved "personal flotation device light," §25.25-13, prescribes how the light has to be attached, §25.25-15, and specifies the type of reflective material on the life preserver, *id.*;
- requires the vessel to have an Emergency Position Indicating Radiobeacon (EPIRB) that will float free if the vessel sinks, §25.26-10, and prescribes the testing of the EPIRB, §25.26-50;
- prescribes the number of, and maintenance procedures for, fire extinguishing equipment, §25.30; and
- prescribes standards for ventilation of tanks and engine spaces, §25.40.

Uninspected towing vessels are subject to additional safety requirements in Part 27 of 46 CFR. Those requirements assure that the crew of an uninspected tug is able to respond to workplace emergencies safely. For example, effective October 8, 2001, each tug must be equipped with

- a general alarm to "notify persons on board in the event of an emergency," §27.205(a), and that is tested at least once each week, §27.205(a)(4);

- in the engine room and other potentially noisy parts of the vessel, a flashing red light and a sign near the general alarm that reads "Attention General Alarm—When Alarm Sounds or Flashes Go to Your Station," §27-205(a)(3);
- a system for detecting engine-room fires, §27.210;
- a system for communicating with the engine room, §27.215; and
- a remote fuel shutoff valve that is located near the fuel supply, that can be operated from "a safe place outside the space in which the valve is located," and that is "marked in clearly legible letters at least 25 millimeters (1 inch) high indicating the purpose of the valve and the way to operate it." §27.340(f).[10]

The foregoing requirements apply to existing tugs. Additional requirements apply to tugs for which construction contracts were signed on or after January 18, 2000. See 46 CFR 27.101 (defining "New Towing Vessel") and 46 CFR 27.300-355 (prescribing substantive fire protection measures for New Towing Vessels).

Finally, 33 CFR 164.72 requires vessels to be equipped with radar, a searchlight, a radio, a compass, an echo depth sounding device, appropriate charts, and a global positioning system or other electronic position-fixing device.

[10] Although 46 CFR 27.340(f) is included with the "new towing vessel" regulations, §27.230 provides that even for existing tugs "by October 8, 2001, you must have remote fuel shutoff that meets §27.340(f) installed on your vessel."

3. Coast Guard regulations "affect[] occupational safety and health" within the meaning of Section 4(b)(1) by requiring uninspected vessels of the types operated by AWO members to be manned by crew members who are qualified and whose hours of work are regulated.

In light of the inherent dangers of the sea, the most effective way to assure workplace safety for employees on vessels is to prescribe the qualifications, number, and hours of work of the crew. The Coast Guard has done this for uninspected vessels of the types operated by AWO's members.

First, Part 15 of 46 CFR specifies manning requirements for uninspected vessels. 46 CFR 15.103(a). Section 15.610 requires towing vessels at least 26 feet long[11] to be under the direction and control of a licensed master or mate "holding an endorsement on his or her license for towing vessels." In addition, Section 15.601 incorporates by reference numerous provisions of subparts F, G, and H of Part 15. Those subparts in turn trigger the application of additional regulations, many of which are quite lengthy and detailed. For example, Section 15.601 incorporates Section 15.701, which effectively makes many uninspected vessels operated by AWO members subject to over 90 pages of regulations in the CFR setting forth various licensing requirements for crew members and types of equipment, all for the purpose of assuring safety.[12]

[11] Nearly all of the tugs operated by AWO members are more than 26 feet long.

[12] Section 15.601 incorporates Section 15.701. Section 15.701 applies to uninspected vessels over 200 gross tons operating seaward of certain Boundary Lines set forth in 46 CFR 7.1 – 7.180. On those vessels (many of which are uninspected vessels operated by AWO members), the master, mates and engineers are required to hold licenses issued by the Coast Guard under part 10 of 46 CFR. Part 10 consumes approximately 90 printed pages in the Code of Federal Regulations. *See also* Section 15.730, which is also incorporated by reference through Section 15.601, and which prescribes certain language requirements for crew members.

Second, the Coast Guard limits the hours of work of crew members. 46 U.S.C. § 8104 and 46 CFR 15.705 (another provision that section 15.601 incorporates by reference) require the establishment of "watches" on vessels operated by AWO members, including uninspected vessels. In general, three watches are required on seagoing vessels, and two watches are required on a voyage of less than 600 miles.

Third, Coast Guard regulations require comprehensive drug testing of crew members, again in recognition of the fact that the most effective way to assure a safe workplace at sea is to assure that the vessel's crew is qualified. 46 CFR Part 16 requires pre-employment testing, random testing during employment, and testing after any "serious marine incident" (a term which includes most accidents). 46 CFR 16.210, 230, and 240, respectively. In addition, 46 CFR 16.401 requires adoption of an Employee Assistance Program.

4. Coast Guard regulations "affect[] occupational safety and health" within the meaning of Section 4(b)(1) by requiring uninspected vessels of the types operated by AWO members to utilize practices and procedures that promote workplace safety.

Safe construction, safe equipment, and a safe crew are all important elements of workplace safety. The Coast Guard's regulations in those areas demonstrate that, for the types of tugs and barges operated by AWO's members, the Coast Guard "exercise[s] statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health" within the meaning of Section 4(b)(1). In addition, the Coast Guard requires certain specified safe working practices. For example:

- Personnel on each towing vessel must perform safety drills at least once each month. 46 CFR 27.245 (incorporating standards for New Towing Vessels set forth in 46 CFR 27.355).

- Personnel on each towing vessel must receive safety instruction at least once each month. *Id.*
- Each new crewmember must receive a safety orientation within 24 hours of reporting for duty. *Id.*
- Operators of uninspected vessels must prepare and post an "emergency checkoff list" as "a reminder to the crew of precautionary measures which may be necessary in the event of an emergency situation." 46 CFR 26.03-2(a) (covering emergencies including rough weather, crossing hazardous bars, man overboard, as well as fire at sea).
- Both the towlines and the gear used to attach the towline to the tug and to the barge must meet the detailed requirements of 33 CFR 164.74,[13] including maintaining a logbook or other record of the condition of the towline and of when it was inspected, 33 CFR 164.74(a)((3)(v), and also including "a method . . . that does not endanger operating personnel but that easily releases the towline." 33 CFR 164.74(b)(4).

It is important to note that the Coast Guard regulations discussed immediately above require uninspected tugs to adopt emergency preparedness and emergency response measures – the type of deficiencies for which OSHA cited Mallard Bay's drilling rig. *See* page 8, above. In other words, if an uninspected tug did not have emergency response plans meeting the requirements discussed above, the failure to do so would violate existing Coast Guard regulations applicable to uninspected tugs. For OSHA to inject its own, additional regulations would be to create precisely the overlapping regulatory regimes that Congress prohibited in Section 4(b)(1).

More generally, the Coast Guard regulations discussed at pages 7 – 18 describe a regime intended to promote and assure workplace

[13] *See e.g.*, 33 CFR 164.74 (b)(2), which provides that "each connection is secured by at least one nut with at least one cotter pin or other means of preventing its failure."

safety on uninspected vessels. That discussion demonstrates that Petitioner is incorrect when it asserts that "occupational safety and health of workers on uninspected vessels, therefore, are largely unregulated by the Coast Guard." Pet. Brief at 4-5. On the contrary, the Coast Guard regulations are the type of "regulations affecting occupational safety or health" that preclude OSHA jurisdiction under Section 4(b)(1).

C. The Coast Guard actively regulates workplace safety on uninspected tugs and barges.

The Coast Guard workplace safety regulations discussed above are not a dead letter. The Coast Guard actively regulates uninspected vessels. As noted above, many of the regulations are relatively new and will become effective on October 8, 2001. Of the regulations discussed above, nine were adopted after the March 17, 1983 Memorandum of Understanding between OSHA and the Coast Guard ("MOU"),[14] and another six were initially adopted prior to the MOU but were amended after it. Furthermore, by notice published in the Federal Register on November 8, 2000, the Coast Guard has proposed additional safety regulations requiring installation of fixed fire-extinguishing systems in the engine rooms of towing vessels. 65 Fed. Reg. 66941 (Nov. 8, 2000). Clearly the Coast Guard actively regulates workplace safety on vessels of the types operated by AWO members, even though those vessels are uninspected.

The Coast Guard touts its own role as a safety agency. In its 1999 Annual Report, the first of the Coast Guard's five strategic goals is maritime safety. 1999 Annual Report of the U.S. Coast Guard at 4.[15] The Annual Report goes on to state that in 1999 the Coast Guard conducted "more than 50,000 inspections on merchant vessels." (It is noteworthy that in its own count the Coast Guard does not distinguish between inspected and uninspected vessels.)

[14] Reprinted as Pet. App. 62a-65a.

[15] Posted on Coast Guard web site at http://www.uscg.mil/news/1999Report.pdf.

The Coast Guard clearly believes that it has important safety functions to perform in connection with uninspected vessels such as those operated by AWO's members, because the Coast Guard and AWO entered into a written agreement establishing the Coast Guard-AWO Safety Partnership. (Copy attached as App. 3a-5a.) In that document, the Coast Guard agreed that the objectives "for both the USCG and AWO, are to improve vessel and personnel safety within the barge and towing industry . . . ." *Id.* at 3a. Although the Partnership is described as "a program of cooperative informal, structured processes that will address issues of marine safety and environmental protection," *id.*, the document is careful to reserve for the Coast Guard its role as safety regulator. The Partnership, the document emphasizes, is not intended "to subvert the legitimate role of government regulation in establishing minimum standards necessary to ensure the safety of U.S. waters, vessels and crews." *Id.*[16]

The Coast Guard's Cooperative Towing Vessel Examination Program ("CTVEP") illustrates the Coast Guard's active and extensive regulation of workplace safety on towing vessels.[17] The CTVEP combines voluntary inspections with unannounced, random boardings to assure safety. Under the program, participating towing vessels are voluntarily inspected by the Coast Guard. If the vessel passes the inspection, it receives a decal and generally will not be subject to unscheduled random boardings by the Coast Guard. Vessels that do not participate remain subject to random boardings.[18]

[16] Once again, the document does not differentiate between inspected and uninspected vessels. However, most of the vessels operated by members of AWO are uninspected. Therefore it would make little sense for the Coast Guard to emphasize its regulation of inspected vessels in an agreement with an organization of operators of uninspected vessels.

[17] The CTVEP is a program of the Eighth District of the Coast Guard. The Eighth District includes Louisiana, where Mallard Bay's drilling rig operated.

[18] The Eighth District Instruction 16710.1 regarding CTVEP (copy attached as App. 6a-54a) states: "Unscheduled boardings of 'decaled' towboats shall normally be limited to a check of principal lifesaving and firefighting equipment, as well as

As part of the voluntary CTVEP inspection, the Coast Guard uses a checklist containing the following items under the heading "Safety Policy/Procedures:"

"1. Is there a company safety policy and is [sic] understood by the employees?

"2. Is there a set of specific safety rules?

"3. Is there personal protective gear which includes, at a minimum:

- Usage instructions
- Inspection procedures
- Maintenance procedures
- Replacement schedules

"4. Are there procedures for safety and training drills?

"5. Is there a safety training plan with a list of topics to be covered?

"6. Are there scheduling and frequency procedures for safety and training drills?

"7. Are there procedures for the documentation of safety and training drills?

"8. Are there procedures for the safe use of vessel equipment such as rigging, deck machinery [sic]?

"9. Are there procedures for the crew to be aware of the cargo they are carrying and it's [sic] possible hazards?"[19]

The Coast Guard's explanation for the CTVEP program demonstrates the Coast Guard's commitment to assuring safe

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personnel licenses and documents. . . . Commercial towing vessels without a decal will continue to be subject to random unscheduled boardings." *Id.* at 8a.

[19] *Id.*, Quality Verification Check List Section B. App. 26a.

working conditions for employees on uninspected vessels in the most effective way possible:

> Historically, the Coast Guard conducted unscheduled boardings to ensure that commercial operators complied with applicable U.S. laws and regulations. Penalties were assessed for deficiencies identified. Working with the industry, the Coast Guard became convinced that there is a better way to enhance safety on fleet and line boats. It is believed that a higher level of safety and a more efficient use of resources will be assured through a cooperative voluntary dockside examination program. This is the basis on which the CTVEP was founded.

Id. at App. 14a.

The Coast Guard's safety enforcement program for uninspected towing vessels is not limited to the voluntary CTVEP program. For vessels that do not participate in CTVEP, the Coast Guard still conducts unscheduled boardings using the Eighth Coast Guard District Towing Vessel Boarding Form (copy attached at App. 28a-34a.) That Boarding Form contains over 60 specific items that Coast Guard personnel are to check when boarding a towing vessel, such as the ones operated by AWO's members. While some of these sixty items might not be considered matters "affecting occupational safety or health," 29 U.S.C. § 653(b)(1), many of the items on the Boarding Form clearly and specifically regulate the working conditions of employees on the vessel. For example, Section I of the Boarding Form specifically identifies the following:

- "Living spaces are clean, no build up of debris nor evidence of smoking in bed"
- "Galley cleanliness and refrigeration"
- "Machinery spaces condition: guards in place around all moving machinery, piping is in good condition, no hazards noted"

- "Electrical systems: no jury rigged wiring, guards and globes cover exposed lights in work or external areas, electrical boxes are in satisfactory condition, switches are covered"

Id. at App. 32a (emphasis added).

These are not the actions of an agency disinterested in workplace safety on uninspected vessels. On the contrary, these actions are an explicit assertion of regulatory jurisdiction and an effort to work with the towing operators to enhance the workplace safety of uninspected towing vessels. The Coast Guard's active and ongoing regulation of uninspected towing vessels – including both voluntary and involuntary inspections – contradicts Petitioner's assertion that the Coast Guard "does not have and has not exercised comprehensive authority over the working conditions on uninspected vessels." Pet. Brief at 11-12. Having joined with the towing industry in an effort to promote safety on uninspected vessels, the Coast Guard should not now be heard to disclaim regulatory jurisdiction over such safety.

D. OSHA regulation of uninspected vessels of the types operated by AWO's members would be unworkable, because those vessels sail "in and out of [OSHA's] coverage."

OSHA's statutory jurisdiction is limited to workplaces located in a State. 29 U.S.C. § 653(a). However, many of the AWO members' vessels operate both inside and outside the boundaries of any state. If the OSH Act were applied to all uninspected vessels, "seamen on [such] a vessel [would] steam in and out of OSHA coverage as they enter or depart ports in United States territory." *Donovan v. Texaco, Inc.*, 720 F.2d 825, 829 (5th Cir. 1983). Applying the OSH Act to all uninspected vessels would therefore be unworkable.

As Petitioner acknowledges, "the OSH Act applies to 'employment performed in a workplace in a State,' as well as in specified territories and 'Outer Continental Shelf lands.'" Brief of

Petitioner at 2, quoting 29 U.S.C. § 653(a) (emphasis added). AWO estimates that its members operate approximately 200 tugs that regularly perform international voyages or otherwise operate beyond the waters of any state. If this Court were to adopt the position urged by Petitioner, those vessels would be subject to OSHA's jurisdiction when they happened to be physically located within a state, would not be subject to OSHA's jurisdiction when on the high seas, and would always be subject to Coast Guard regulations as discussed above at pages 7 – 18.

> This would be, we think, a disastrous and unworkable rule: one that would require . . . vessels to paint all stumbling hazards yellow as they enter port, one that would forbid retaliation for complaints made to the Coast Guard in port but not for those made to it on the high seas, and so forth.

Id. See also Herman v. Tidewater Pacific, Inc., 160 F.3d 1239, 1243 (9th Cir. 1998) (acknowledging that "vessels operating on the high seas are certainly outside of the Act's coverage," but concluding that OSHA had jurisdiction under the facts of the case before it because "the waters involved here are by definition within the State of Alaska").[20]

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[20]The Ninth Circuit's decision not only glossed over the difficulties created by OSHA's limited geographic jurisdiction, it concluded that the Coast Guard had not exercised its jurisdiction, notwithstanding the Ninth Circuit's own lengthy description of Coast Guard regulation of uninspected tugs: "The Dr. Jack, however, is an uninspected vessel. While not subject to the regulations specific to inspected vessels, uninspected vessels are nonetheless subject to a number of Coast Guard safety-related regulations. In particular, 46 U.S.C. §§ 4101- 4106 and 46 C.F.R. pts. 24-28 deal specifically with uninspected vessels. Among other things, these provisions enumerate certain required safety equipment such as fire extinguishers, lifesaving equipment, emergency radio beacons, and ventilation for tanks and engine spaces. *See* 46 U.S.C. S 4102; 46 C.F.R. pt. 25.

"Uninspected vessels are also subject to other requirements generally applicable to the type of vessel they are. For example, the Dr. Jack is a "vessel of the United States" and a "towing vessel." *See* 46 U.S.C. §§ 2101(40), 2101(46). It is therefore

The Fifth Circuit did not need to concern itself with geographical jurisdiction because it found there was an industry-wide exemption, Pet. App. at 7a, and because Mallard Bay's drilling rig "was stationary and within the territorial boundaries of the State of Louisiana."[21] Accordingly, the record in this case does not support applying the OSH Act to all uninspected vessels, regardless of whether they regularly move in and out of OSHA's geographic jurisdiction. To accept Petitioner's invitation to apply the OSH Act

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subject to the seaworthiness provisions of 46 U.S.C. §§ 10901-10908. These provisions apply to the vessel's "crew, hull, equipment, tackle, machinery, apparel, furniture, [and] provisions of food or water." 46 U.S.C. § 10902(a)(1). The statutes create a means of quasi-self-regulation: members of the crew are empowered to initiate a court-supervised inspection of conditions they believe are unfit. *See id.* Three court-appointed marine surveyors complete this inspection, and the district court determines whether the vessel is fit for voyage. 46 U.S.C. § 10903. In addition, the doctrine of seaworthiness gives a private right of action to a seaman who is injured by equipment that is not fit for its intended use. Ribitzki v. Canmar Reading & Bates, Ltd., 111 F.3d 658, 664 (9th Cir.1997).

"Additionally, an uninspected vessel's status as a United States flag vessel may subject it to further regulation depending on the type of service in which it engages. Uninspected vessels may therefore be subject to Coast Guard regulations concerning load lines, marine engineering, electrical engineering, and dangerous cargoes. 46 C.F.R. ch. I, subchs. E, F, J, N. For example, as a towing vessel, the Dr. Jack is subject to the load line regulations. Not only are uninspected vessels subject to these specific and general regulations, in this case the entire crew was subject to licensing and certification. *See* 46 U.S.C. §§ 7101-7114; 46 C.F.R. pts. 10-16. The certification requirements for uninspected towing vessels prescribe that crew members be proficient in certain safety-related tasks such as fire fighting and first aid. *See* 46 C.F.R. § 10.203, Table 10.203. At the time the Secretary issued the citations in this case, the Dr. Jack was operating in Valdez, Alaska and was subject to inspection by the Coast Guard Marine Safety Office in Valdez for compliance with these and other general regulations." 160 F.3d at 1242-43.

[21] *Secretary of Labor v. Mallard Bay Drilling, Inc.* (OSHRC Docket No. 97-1973), reprinted at Pet. App. at 13a. Neither the Second Circuit in *Donovan v. Red Star Marine Services, Inc.*, 739 F.2d 774 (2d Cir. 1984) nor the Eleventh Circuit in *In re Inspection of Norfolk Dredging Co.*, 783 F.2d 1526 (11th Cir. 1986) considered the limited geographical scope of OSHA's jurisdiction.

to all uninspected vessels, including tugs operated by AWO members that regularly operate beyond state waters, would "produce an additional anomaly, that of steaming in and out of OSHA coverage." *Donovan v. Texaco,* 720 F.2d at 829.

E. Employees on uninspected vessels of the types operated by AWO's members are protected by long-standing rules of substantive law that assure workplace safety, without OSHA regulation.

Petitioner asserts that unless OSHA regulates workplace safety on all uninspected vessels, "thousand of employees would be left without federal regulatory protection from workplace health and safety hazards," Pet. Brief at 14. Not only does Petitioner overlook the Coast Guard's comprehensive safety regulations discussed above,[22] Petitioner's assertion also ignores the fact that seamen on uninspected vessels of the types operated by AWO members are also protected by the warranty of seaworthiness and the Jones Act, 46 U.S.C. § 688.

In addition to the Coast Guard's workplace safety regulations, federal common law imposes on every shipowner an absolute duty to provide each seaman with a seaworthy vessel. If the seaman's workplace is not reasonably fit for its intended use and causes damage to the seaman, then the vessel is unseaworthy and the seaman has a claim against the vessel owner for tort damages, including pain and suffering, disability, loss of earnings and medical expenses. *Mahnich v. Southern Steamship Co.*, 321 U.S.96, 99 (1944) ("vessel and owner are liable to indemnify a seaman for injury caused by unseaworthiness of the vessel or its appurtenant appliances and equipment").

Furthermore, the Jones Act applies the standards of the Federal Employers' Liability Act, 45 U.S.C. § 51 et seq., to claims by

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[22] Petitioner states that "[t]he Coast Guard, however, does not have and has not exercised comprehensive authority over the working conditions on uninspected vessels." Pet. Brief at 11-12. *See also id.* at 23. The discussion at pages 7 – 18 above demonstrates that this assertion is clearly wrong.

injured seamen. Under the statutes, the employer "shall be liable in damages to any person suffering injury while he is employed by such [employer], . . . resulting in whole or in part from the negligence of any of the officers, agents, or employees of such [employer.]" 45 U.S.C. § 51. *See generally Hopson v. Texaco*, 383 U.S. 262, 263 (1966) (Jones Act makes "employer liable for the injuries negligently inflicted on its employees by its officers, agents, or employees.")

Thus seamen on uninspected vessels are already protected by numerous legal doctrines. Contrary to the suggestions of Petitioner, declining to extend OSHA regulation to all uninspected vessels would not leave those employees unprotected. Rather, it would continue the historic role of courts and of the common law, together with the Coast Guard's comprehensive workplace safety regulations discussed above, as the primary guarantors of workplace safety on vessels, instead of injecting a federal administrative agency which does not have specialized knowledge of, or historical experience with, the dangers of the sea.[23]

F. The result sought by Petitioner would treat all uninspected vessels as if they were the same, thus inappropriately creating an industry-wide non-exemption from OSHA regulation.

Petitioner criticizes the opinion below for utilizing an industry-wide exemption, but Petitioner's own approach would result in an industry-wide "non-exemption" for uninspected vessels. Petitioner argues that it was error to treat all vessels the same, regardless of whether they are inspected or uninspected. But Petitioner would treat all uninspected vessels the same, regardless of whether they are inland drilling rigs like Mallard Bay's or towing vessels operated by AWO's members subject to the Coast Guard safety regulations discussed above.

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[23] It is noteworthy that although OSHA asserts jurisdiction over all uninspected vessels, it was the Coast Guard, not OSHA that conducted the actual investigation of the explosion on Mallard Bay's drilling rig. *See* Pet. Brief at 6, Pet. App. 22a – 51a.

Petitioner relies heavily on the March 17, 1983 MOU between the Coast Guard and OSHA, emphasizing that "[n]othing in this MOU pertains to uninspected vessels." *Id.*, Pet. App. 62a. But saying that the MOU does not apply to uninspected vessels does not mean that the Coast Guard does not regulate uninspected vessels. The MOU does not disclaim Coast Guard jurisdiction over uninspected vessels nor does it cede to OSHA authority to regulate workplace safety on uninspected vessels. Rather the MOU has no effect whatsoever on uninspected vessels, and the Coast Guard has continued to regulate them, adopting or amending no less than fifteen of the regulations discussed at pages 7 – 18 above after the date of the MOU.

In sum, this Court should decline Petitioner's invitation to announce an industry-wide "non-exemption" from OSHA that is applicable to all uninspected vessels without regard to their differences and the differences in the nature and scope of the Coast Guard regulations that apply to them. The Coast Guard has exercised and continues to exercise its authority with respect to workplace safety on the uninspected vessels operated by AWO's members. It is the federal agency best suited to regulate vessels and the safety of the seamen who work aboard them. Overlapping regulation by OSHA will create the confusing, duplicative and potentially inconsistent regulatory structure that Congress sought to avoid.

IV. CONCLUSION

The decision of the Fifth Circuit should be affirmed or, in the alternative, the case should be remanded for a hearing to determine whether the Coast Guard has exercised statutory authority with respect to the specific type of uninspected vessel involved in this case.

Respectfully submitted,

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Attorneys for Amicus Curiae The American Waterways Operators

June 8, 2001

U.S. Department of Justice
Office of the Solicitor General

Washington, D.C. 20530

May 11, 2001

Also via telefax: 206-464-0125

Barbara L. Holland
Garvey, Schubert & Barer
Eighteenth Floor
Second & Seneca Building
1191 Second Avenue
Seattle, Washington 98101-2939

Re: Chao, Secretary of Labor v. Mallard Bay Drilling, No. 00-927

Dear Ms. Holland:

As requested in your letter of May 10, 2001, I hereby consent to the filing of a brief amicus curiae on behalf of the American Waterways Operators in the above-styled case.

Sincerely,

Barbara D. Underwood

Barbara D. Underwood
Acting Solicitor General

cc: William K. Suter, Esquire
Clerk
Supreme Court of the United States
Washington, D.C. 20543

JONES WALKER

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May 14, 2001

By Federal Express & Fax (206) 464-0125
Ms. Barbara L. Holland
Garvey, Schubert & Barer
18th Floor, Second & Seneca Building
1191 Second Avenue
Seattle, Washington 98101

Re: Department of Labor vs. Mallard
Bay Drilling, Inc.
U.S. Supreme Court – No. 00-0927
Our File 79485-00

Dear Barbara:

Please be advised that on behalf of Mallard Bay Drilling, Inc., we consent to the filing of an amicus curiae brief on behalf of the American Waterways Operators in connection with the above matter.

We are forwarding to you by Federal Express today a copy of the Brief filed by the Petitioner, Elaine L. Chao, Secretary of Labor, and a copy of the amicus curiae brief filed on behalf of the American Trial Lawyers of America.

With best regards, I remain

Very truly yours,

Patrick J. Veters

PJV:dr
Encl.

UNITED STATES COAST GUARD

AND

AMERICAN WATERWAYS OPERATORS

OUTLINE OF QUALITY PARTNERSHIP

FOR

MARINE SAFETY AND ENVIRONMENTAL PROTECTION

Purpose and Objective of the Quality Partnership

1. The purpose of this quality partnership between the United States Coast Guard (USCG) and the American Waterways Operators (AWO) is to strengthen the communication and working relationship between the Coast Guard and the barge and towing industry. Its objectives, for both the USCG and AWO, are to improve vessel and personnel safety within the barge and towing industry and enhance the protection of the environment along our nation's waterways. These objectives have been identified as strategic goals within the Coast Guard's "M" Business Plan and Performance Plan under the Government Performance and Results Act (GPRA), and within AWO's strategic plan, *AWO 2000*.

Outline of the Quality Partnership

2. The quality partnership covered by this agreement is to establish a program of cooperative, informal, structured processes that will address issues of marine safety and environmental protection. These processes are not intended to subvert the legitimate role for government regulation in establishing minimum standards necessary to ensure the safety of U.S. waters, vessels and crews; nor are they intended to supplant the important role that has been and continues to be played by existing federal advisory committees to the Coast Guard (including the Towing Safety Advisory Committee, Chemical Transportation Advisory Committee, etc.). Rather, they are intended to complement these other legitimate government and industry functions by providing a flexible mechanism for joint Coast Guard-industry action in a results-oriented, non-regulatory environment.

Details of the Quality Partnership

3. The USCG and AWO agree to establish a quality partnership to further mutual goals of safety and environmental protection. This quality partnership involves creating national, regional and local Quality Steering Committees to review and act on "Opportunities for Improvement" (OFIs) received from members of the barge and towing industry, AWO, and USCG personnel. Quality Steering Committees (QSC) will identify these OFIs that are candidates for cooperative Coast Guard-industry attention and then set up Quality Action Teams (QATs) to correct the problem or improve the process identified in the OFI.

4. Quality Action Teams will operate under the guidance of the QSC and conduct their work using a quality process to analyze the issues involved and recommend process improvements including, as a minimum, the following steps:

a. Define the scope of the problem or process improvement needed (i.e., determine the base line), utilizing statistical data, case studies, etc., as available;

b. Analyze the data/identify root causes of the problem;

c. Identify solutions to the problem or improvements to the process based on analysis of available data/evidence;

d. Identify the measure(s) by which the success of proposed solutions will be judged and check the validity of the proposed solutions by measuring initial results;

e. Refine proposed solutions as necessary; and,

f. Develop an implementation plan (including identification of the target audience for the improvement) for submittal back to the Quality Steering Committee.

5. Quality Steering Committees will review the work of the QAT to ensure that all necessary quality steps have taken place, that proposed solutions and quality improvements are supported by the underlying analysis, and that the proposed implementation plan is complete and understandable. Having validated the QAT's work, the QSC will endorse the results and communicate proposed improvements to the target audience identified in the QAT's implementation plan.

Action

6. To institutionalize the quality partnership described above, the USCG and AWO agree to undertake the following actions:

a. Both the USCG and AWO will promote this Quality Partnership within our two organizations via appropriate channels.

b. The USCG and AWO will establish a National Quality Steering Committee by September 30, 1995.

c. The National QSC will establish by November 1, 1995, a National Quality Action Team (QAT) that initially will address the issue of deckhand fatalities.

d. The USCG and AWO will establish Regional Quality Steering Committees in the AWO Midcontinent and Southern Regions (Second and Eighth Coast Guard Districts) by October 1, 1995.

e. These Regional QSCs will identify by November 1, 1995, no more than two Captain of the Port Zones per Region for the establishment of Local QSCs.

f. The experiences gained by the National, Regional and Local QSCs in meeting the objectives of this quality partnership will be evaluated by the National QSC after one year's operation. Based on this evaluation, the National QSC will recommend to the USCG and AWO whether to continue and/or expand the quality partnership.

g. If a favorable recommendation is received to continue and/or expand the quality partnership, the USCG and AWO will expand the above described processes to the remainder of the AWO Regions and Coast Guard Districts and Captain of the Port Zones.

Institution of the Quality Partnership

7. This Outline of Quality Partnership is effective upon signature of this agreement. It is informal in nature and may be modified or terminated by either party by mutual agreement at any time.

J. C. Card
Rear Admiral, U. S. Coast Guard
Chief, Office of Marine Safety, Security and Environmental Protection

September 19, 1995
Date

Thomas A. Allegretti
President
American Waterways Operators

September 19, 1995
Date

U.S. Department of Transportation
United States Coast Guard

Commander (m)
Eighth Coast Guard District

501 Magazine St.
New Orleans, LA 70130-3396
Phone: (504) 589-6743

CCGD8INST 16710.1
JAN 21 1997

EIGHTH DISTRICT INSTRUCTION 16710.1

Subj: COOPERATIVE TOWING VESSEL EXAMINATION PROGRAM

1. PURPOSE. This instruction promulgates policy for implementing the cooperative towing vessel examination program (CTVEP).

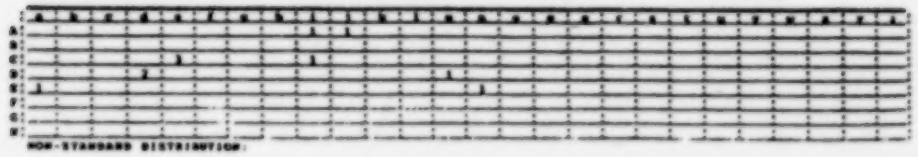
2. DISCUSSION. Commercial towing vessel safety is enhanced through this cooperative effort between industry and the Coast Guard. This program allows the Coast Guard to maximize the use of its resources by concentrating its enforcement activities on higher risk vessels.

3. PROCEDURE.

a. Program entry and voluntary examinations.

(1) Companies that operate towing vessels should apply in writing to one of the participating marine safety offices (MSOs) for entry into the CTVEP. MSOs that participate in the program will act as sponsors to companies and will function as a company's point of contact in all matters relating to the program. Scheduling of examinations is based on the availability of the sponsoring MSO's resources. The CTVEP consists of two phases. Phase I involves an annual examination of a company's towing vessels by Coast Guard personnel and Coast Guard issuance of a decal. Phase II is granted to companies that meet suggested guidelines for marine management and ship operations based on the requirements of the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code), the American Waterways Operators Responsible Carrier Program, or an equivalent quality system. The company must also undergo a verification of their quality program by the Coast Guard.

DISTRIBUTION-SDL No. 133 Eighth District Units Only (Regular, Reserve, and Auxiliary)



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CCGD8INST 16710.1
JAN 21 1997

SUBJ: COOPERATIVE TOWING VESSEL EXAMINATION PROGRAM

3. a. (2) For Phase I companies, the initial vessel examination will be conducted by a qualified Coast Guard examiner. After passing the exam, the vessel will be issued a decal that demononstrates compliance with the regulations. These examinations will be conducted with the understanding that the Coast Guard will not initiate civil penalty action for deficiencies discovered during the examination. Voluntary examinations without penalties are a cornerstone of this program. Discovery of an especially hazardous condition that threatens the safety of the vessel, its crew or the environment will require that the condition be corrected immediately.

(3) For Phase II companies, quality verifications and prescribed vessel examinations will be conducted by qualified Coast Guard examiners. Once a quality verification is completed, a number of company vessels will be examined by the Coast Guard. Although the exact number of vessels to be examined will be determined by the cognizant MSO in conjunction with the company representative, this should normally be no less than ten percent of the operating fleet. Following successful completion of the vessel examinations, the company is granted Phase II designation, which authorizes it to issue decals to its own vessels. Phase II companies will undergo an annual quality verification by the Coast Guard, which will include examination of a number of the company's vessels.

(4) Enclosure (1) contains all the information needed to implement this program. It provides a summary of the CTVEP, an explanation of program administration, and a quality verification checklist that is suggested for use to verify a company's quality program during a Phase II quality verification exam. It also contains a towing vessel boarding form and a list of applicable towing vessel safety requirements.

3. b. Unscheduled boardings.

(1) Commercial towing vessels with current decals will not normally be subject to boardings unless they are involved in a pollution incident, a marine casualty or when the boarding is part of a Coast Guard law enforcement operation. Marine safety units shall use the boarding form in enclosure (1) for all boardings. All other units shall use the CG 4100 form to document boardings. A copy of the boarding form or 4100 form shall be mailed to the sponsoring MSO, by the boarding unit, within five work days of the boarding.

CCGD8INST 16710.1
JAN 21 1997

SUBJ: COOPERATIVE TOWING VESSEL EXAMINATION PROGRAM

3. b. (2) Unscheduled boardings of "decaled" towboats shall normally be limited to a check of principal lifesaving and firefighting equipment, as well as personnel licenses and documents. If an especially hazardous condition is discovered aboard a "decaled" towing vessel during an unscheduled boarding, the boarding unit shall take all actions necessary to ensure the safety of the vessel, its crew and the environment. These steps could include immediate correction of the condition or termination of the vessel's voyage. Sponsoring MSOs shall review all boarding forms or 4100 forms received from boarding units and take appropriate action to ensure that deficiencies are corrected within an acceptable time frame, which, in most cases, will be within 30 days from discovery.

(3) Commercial towing vessels without a decal will continue to be subject to random unscheduled boardings. Regardless of the outcome of an unscheduled boarding, the boarding team shall encourage participation in the CTVEP by providing the vessel operator a copy of either enclosure (2) or (3). Vessels from companies that do not participate in the CTVEP are <u>not</u> eligible to be issued a decal as a result of an unscheduled boarding.

4. <u>ACTION</u>.

a. Effective upon the date of this instruction, the following personnel shall take the actions specified:

(1) CCGD8(m) is responsible for program management and oversight and shall ensure that the CTVEP is carried out consistently.

(2) CCGD8(o) shall provide copies of this instruction to all groups, stations, WPBs, and visiting cutters and shall ensure that unscheduled boardings on "decaled" vessels are limited in scope as described in this instruction.

(3) Commanding officers of MSOs and MSU Galveston are responsible for implementation of the program. Units choosing not to fully implement this program, due to resource constraints or other higher risk priorities, shall conduct familiarization training for vessel boarding personnel. They shall also honor decals issued by other units and use the boarding form in enclosure (1) for all unscheduled towing vessel boardings.

CCGD8INST 16710.1
JAN 21 1997

SUBJ: COOPERATIVE TOWING VESSEL EXAMINATION PROGRAM

4. a. (4) Commanding officers of groups and WPBs shall ensure that boardings of towing vessels are conducted in accordance with paragraph three of this instruction.

T. W. JOSIAH

Encl: (1) Eighth Coast Guard District Cooperative Towboat Examination Program
(2) Boarding Officer letter citing deficiencies
(3) Boarding Officer letter citing no deficiencies

U.S. Department of Transportation
United States Coast Guard

Commander
8th Coast Guard District
Hale Boggs Federal Bldg

501 Magazine Street
New Orleans, LA 70130-3396
Staff Symbol: (mec)
Phone: (504) 589-6743
Fax 589-4999

Dear Captain:

Your vessel was boarded to check for compliance with federal laws and regulations. The attached boarding report lists violations that provide for assessment of significant civil penalties. The Coast Guard will waive these penalties if, within the next 30 days, you:

1) Correct all of the deficiencies noted on the boarding report.

2) Contact any of the below listed Coast Guard Offices and initiate the actions to begin participation in the cooperative towing vessel examination program.

Marine Safety Office Corpus Christi, TX	(512) 888-3181
Marine Safety Unit Galveston, TX	(409) 766-3642
Marine Safety Office Houston-Galveston, TX	(713) 671-5180
Marine Safety Office Huntington, WV	(304) 529-5524
Marine Safety Office Louisville, KY	(502) 582-5194
Marine Safety Office Memphis, TN	(901) 544-3941
Marine Safety Office Mobile, AL	(334) 441-5203
Marine Safety Office Morgan City, LA	(504) 384-2406
Marine Safety Office New Orleans, LA	(504) 589-6273
Marine Safety Office Paducah, KY	(502) 442-1621
Marine Safety Office Pittsburgh, PA	(412) 644-5808
Marine Safety Office Port Arthur, TX	(409) 723-6509
Marine Safety Office St. Louis, MO	(314) 539-3091

The goal of this penalty waiver program is to allow vessel owners the opportunity to use funds that would go to a civil penalty to bring their vessels into compliance with all safety requirements.

In addition to having a safer vessel, enrollment in the cooperative towing vessel examination program should further benefit you by resulting in less frequent and less time consuming boardings by the Coast Guard.

Failure to take advantage of the cooperative towing vessel examination program penalty waiver provision within 30 days will result in initiation of civil penalty proceedings.

U.S. Department of Transportation
United States Coast Guard

Commander
8th Coast Guard District
Hale Boggs Federal Bldg

501 Magazine Street
New Orleans, LA 70130-3396
Staff Symbol: (mec)
Phone: (504) 589-6743
Fax 589-4999

Dear Captain:

Your vessel was boarded to check for compliance with federal laws and regulations and no deficiencies were noted.

The condition of your vessel makes it a good candidate for our cooperative towing vessel examination program. This program will improve the safety of your vessel and will result in less frequent and less time consuming boardings by the Coast Guard. Participation in this program may be initiated by contacting any of the following Coast Guard Eighth District offices:

Marine Safety Office Corpus Christi, TX	(512) 888-3181
Marine Safety Unit Galveston, TX	(409) 766-3642
Marine Safety Office Houston-Galveston, TX	(713) 671-5180
Marine Safety Office Huntington, WV	(304) 529-5524
Marine Safety Office Louisville, KY	(502) 582-5194
Marine Safety Office Memphis, TN	(901) 544-3941
Marine Safety Office Mobile, AL	(334) 441-5203
Marine Safety Office Morgan City, LA	(504) 384-2406
Marine Safety Office New Orleans, LA	(504) 589-6273
Marine Safety Office Paducah, KY	(502) 442-1621
Marine Safety Office Pittsburgh, PA	(412) 644-5808
Marine Safety Office Port Arthur, TX	(409) 723-6509
Marine Safety Office St. Louis, MO	(314) 539-3091

Eighth Coast Guard District

Cooperative Towing Vessel Examination Program

21 JAN 97

EIGHTH COAST GUARD DISTRICT COOPERATIVE TOWING VESSEL EXAMINATION PROGRAM

PROGRAM SUMMARY

Program Summary

Overview

The Eighth District's Cooperative Towing Vessel Examination Program (CTVEP) is a voluntary program developed with industry to enhance safety on fleet and line boats. It is designed to reward companies that have shown a commitment to quality and it allows for more efficient use of Coast Guard and industry resources.

Historically, the Coast Guard conducted unscheduled boardings to ensure that commercial operators complied with applicable U.S. laws and regulations. Penalties were assessed for deficiencies identified. Working with the industry, the Coast Guard became convinced that there is a better way to enhance safety on fleet and line boats. It is believed that a higher level of safety and a more efficient use of resources will be assured through a cooperative voluntary dockside examination program. This is the basis on which the CTVEP was founded.

The Cooperative Towing Vessel Examination Program

The CTVEP greatly reduces unscheduled boardings for participating companies and provides an opportunity to correct deficiencies without penalty. A company must apply via letter to the commanding officer of the cognizant Marine Safety Office for entry into the program. The program consists of two phases:

Phase I - Vessel Exam: Companies will schedule annual examinations with the Coast Guard which will be conducted using a joint MSO-industry examination checklist. Companies will be provided thirty days to correct all but the most critical discrepancies, which must be corrected immediately. No penalties will be assessed as a result of these examinations. Once discrepancies are corrected, the vessel will be issued a decal for display in the wheelhouse. This decal will ensure that the vessel is subject to no unnecessary examinations in the Eighth Coast Guard District for the period of one year. The decal will be honored by all Eighth District Coast Guard Units.

Phase II - Quality Verification Exam: Companies may enter Phase II of the Cooperative Towing Vessel Examination Program if they use an approved quality program to manage their vessel operations. Approved programs include the suggested guidelines for marine management and ship operation based upon the requirements of the International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code), the AWO Responsible

Carrier Program, or any other equivalent quality management program approved by the cognizant MSO. Participation in Phase II of the program allows the company to issue its own decals. Entry into Phase II requires two steps. First the company must complete a quality verification examination by the Coast Guard. During this exam, the Coast Guard will use the principles of the "AWO Responsible Carrier Program" as a guide. Following a successful exam, the second step of Phase II will include the examination of a percentage of the company's towing vessel fleet. The number of vessels examined will be determined by the cognizant MSO, but shall normally be no less than ten percent of a company's fleet. In making the percentage determination, the MSO should work closely with the company's quality representative, and consider the overall quality of the company, the operating area of its vessels and the total number and variety of towing vessels within the company's fleet. The goal of the Phase II program is to allow the Coast Guard to observe, through scheduled examinations, that the company's quality program is fully in place aboard its vessels. Companies that fail to meet the Coast Guard standard for either the quality verification exam (Phase II) or the vessel exam (Phase I) will be provided written notice of the discrepancies. The company will then be allowed to correct the deficiencies and request another Phase II examination. Companies failing the Phase II examination may opt to forego Phase II designation and choose to enroll in the Phase I program. It is also expected that many companies will transition from Phase I to Phase II over a period of time.

This program provides numerous benefits to both the Coast Guard and the participating companies.

Coast Guard Benefits

1) Greater emphasis on prevention and quality systems.

2) More effective use of resources.

3) Better focus on high risk vessels.

4) Increased industry cooperation.

5) Provides CG/Industry contact at "deck plate" level.

Company Benefits

1) Voluntary program. Participation is at company's discretion.

2) Provides for scheduling of examinations more compatible with operations.

3) Focuses on education and correction of deficiencies, not penalties.

4) Eliminates repeat or multiple boardings and minimizes examination time.

5) Standardizes examinations.

6) Offers a natural progression to self-inspection using existing modal company concepts such as AWO's Responsible Carrier Program.

Noncompliance

Participation in the CTVEP and display of either a Phase I or Phase II decal will preclude unnecessary unscheduled vessel boardings by Eighth District units. Boardings subsequent to a pollution incident or marine casualty will continue as will boardings that are necessary in the interest of safety, environmental protection, or the enforcement of law or regulation. Boarding units will report all discrepancies found to the MSO that issued the vessel's decal by forwarding a copy of the boarding form or 4100 form within five work days of the boarding. For an especially hazardous condition that threatens the safety of the vessel, its crew, or the environment, the boarding unit may require that the condition be corrected immediately. In these circumstances the decal-issuing MSO shall be notified immediately by the boarding unit. Additionally, depending on the nature of the discrepancies and the circumstances of the incident, civil penalty action may be initiated by the boarding unit.

Upon receipt of a boarding report that shows deficiencies, the decal issuing MSO will contact the vessel's owner and/or operator and grant up to thirty days to correct any deficiencies noted. If, after thirty days, the owner and/or operator has not corrected the deficiencies to the satisfaction of the MSO, the vessel's company will either be reverted back to Phase I or entirely withdrawn from the CTVEP. In all cases where the discrepancy hazarded the vessel or its crew, the sponsoring MSO shall investigate the matter to determine the reason for the failure of the company's quality program. If this investigation reveals a lack of commitment to safety by company management, action shall be taken to remove the company from the CTVEP.

Scheduling

Requests for vessel examinations or company enrollments shall be forwarded to any of the following Coast Guard offices:

U.S. Coast Guard MSO St. Louis
Attn: Chief of Port Operations
Suite 8.104E, 1222 Spruce Street
St. Louis, MO 63103-2835
(314) 539-3091

U.S. Coast Guard MSD Quad Cities
Attn: Supervisor
Rock Island Arsenal, Bldg. 218
Rock Island, IL 61204-3220
(309) 782-0627

U.S. Coast Guard MSD Nashville
Attn: Supervisor
Suite 146, 220 Great Circle Road
Nashville, TN 37228-1700
(615) 736-5421

U.S. Coast Guard MSD Cincinnati
Attn: Supervisor
3653 River Road
Cincinnati, OH 45204-1094
(513) 921-9033

U.S. Coast Guard MSO Huntington
Attn: Chief of Port Operations
1415 Sixth Avenue
Huntington, WV 25701-2420
(304) 529-5524

U.S. Coast Guard MSD Greenville
Attn: Supervisor
1801 Industrial Park Road
P.O. Box 882
Greenville, MS 38701-9586
(601) 332-0964

U.S. Coast Guard MSSO Port Lavaca
Attn: Supervisor
225 No. Virginia, Suite 2B
Port Lavaca, TX 77979
(512) 552-7422

U.S. Coast Guard MSO Houston-Galveston
Attn: Commanding Officer
P.O. Box 446
Galena Park, TX 77547
(713) 671-5199

U.S. Coast Guard MSD St. Paul
Attn: Supervisor
P.O. Box 65428, 180 E. Kellog Blvd.
St. Paul, MN 55165-0428
(612) 290-3991

U.S. Coast Guard MSO Paducah
Attn: Chief of Port Operations
225 Tully Street
Paducah, KY 42003-1582
(502) 442-1621

U.S. Coast Guard MSO Louisville
Attn: Chief of Port Operations
600 Martin Luther King, Jr. Room 360
Louisville, KY 40202-2230
(502) 582-5194

U.S. Coast Guard MSO Pittsburgh
Attn: Chief of Port Operations
100 Forbes Ave., Kossman Bldg.
Pittsburgh, PA 15222-1371
(412) 644-5808

U.S. Coast Guard MSO Memphis
Attn: Chief of Port Operations
200 Jefferson Ave., Suite 1301
Memphis, TN 38101-2300
(901) 544-3941

U.S. Coast Guard MSO Corpus Christi
Attn: Commanding Officer
400 Mann Street, Suite 210
Corpus Christi, TX 78401
(512) 888-3177

U.S. Coast Guard MSSO Brownsville
Attn: Supervisor
3505 Boca Chica Blvd., #301
Brownsville, TX 78521
(210) 546-2786

U.S. Coast Guard MSD Helena
Attn: Supervisor
617 Walnut Street, Room 204
Helena, AR 72342-3231
(504) 338-8790

U.S. Coast Guard MSO Mobile
Attn: Commanding Officer
150 No. Royal, P.O. Box 2924
Mobile, AL 36602-3922
(334) 441-5201

U.S. Coast Guard MSO Morgan City
Attn: Commanding Officer
800 David Drive, Room 200
Morgan City, LA 70380
(504) 384-2406

U.S. Coast Guard MSFO Galliano
Attn: Supervisor
c/o MSD Houma
425 Lafayette Street, Room 204
Houma, LA 70360
(504) 632-8675

U.S. Coast Guard MSO New Orleans
Attn: Commanding Officer
1615 Poydras Street
New Orleans, LA 70112
(504) 589-6196

U.S. Coast Guard MSO Port Arthur
Attn: Commanding Officer
2875 Jimmy Johnson Boulevard
Port Arthur, TX 77640
(409) 723-6513

U.S. Coast Guard MID Jennings
c/o Leevac Shipyard
P.O. Box 1190
Jennings, LA 70546
(318) 824-6968

U.S. Coast Guard DMI LaCrescent
Attn: Supervisor
1114 South Oak Street
LaCrescent, MN 55947
(507) 895-6341

U.S. Coast Guard MSD Panama City
Attn: Supervisor
P.O. Box 32043
Panama City, FL 32407-8043
(904) 233-0386

U.S. Coast Guard MSD Houma
Attn: Supervisor
425 Lafayette Street, Room 204
Houma, LA 70360
(504) 868-5595

U.S. Coast Guard MSFO Lafayette
Attn: Supervisor
#3 Flagg Place, Suite A6
Lafayette, LA 70508
(318) 988-8220

U.S. Coast Guard MSD Baton Rouge
Attn: Supervisor
640 Main Street, Suite 103
Baton Rouge, LA 70801
(504) 389-0271

U.S. Coast Guard MSD Lake Charles
Attn: Supervisor
150 Marine Street, Box #4
Lake Charles, LA 70601
(318) 433-3765

U.S. Coast Guard DMI Peoria
Attn: Supervisor
Foot of Washington Street
East Peoria, IL 61611
(309) 694-7779

U.S. Coast Guard MSU Galveston
Attn: Commanding Officer
601 Rosenburg, Room 309
Galveston, TX 77550-1705
(409) 766-3655

EIGHTH COAST GUARD DISTRICT COOPERATIVE TOWING VESSEL EXAMINATION PROGRAM

GLOSSARY OF TERMS, ROLES, RESPONSIBILITIES AND ADMINISTRATIVE PROCEDURES

Glossary of Terms, Roles, Responsibilities and Administrative Procedures

Glossary of Terms

The following are terms found within the Cooperative Towing Vessel Examination Program:

1. **Sponsoring MSO**: An MSO that will be responsible for program coordination and issuance of decals. This will include receiving written requests for participation, processing the requests, providing information, and establishing a sponsorship agreement. For Phase I participants, the sponsoring MSO will conduct vessel exams and arrange with other MSO's for examinations requested outside the sponsoring MSO zone. For Phase II participants, the sponsoring MSO will conduct a quality verification examination of a company's quality program. Once the quality verification exam is completed, the sponsoring MSO will meet with the company's representative to establish the percentage of vessels to examine. The sponsoring MSO is a quality partner of the company and will provide feedback on a company's vessels and/or quality programs. Additionally, the sponsoring MSO will seek feedback from the company on processes improvements that would be useful to enhance the Cooperative Towing Vessel Examination Program.

2. **Sponsorship Agreement**: An agreement between the sponsoring MSO and a company which outlines scheduling, administrative procedures and examinations for enrollment in either Phase I or Phase II.

3. **Quality Verification Examination**: A review conducted by the Coast Guard on the quality program of companies wishing to earn Phase II designation. The quality verification examination is done to assess the overall scope of a company's quality program. After completion of the quality verification examination the sponsoring MSO will meet with the company to discuss the company's quality program. If the sponsoring MSO is satisfied with a company's quality program they will initiate examination of a number of the company's vessels. This number will be discussed between the sponsoring MSO and the company representative.

4. **Unscheduled Boarding:** Boardings conducted on towing vessels by Coast Guard personnel without prior notice to the company. Unscheduled boardings would not occur on any decaled towing vessel within the Eighth District unless it is involved in a pollution incident, a marine casualty, or when a boarding is necessary in the interest of safety, environmental protection or the enforcement of law or regulation.

5. **Scheduled Examinations:** Examinations conducted on towing vessels by Coast Guard personnel with prior notice to the company. Scheduled examinations are arranged with the company's sponsoring MSO. Scheduled examinations will be conducted with the expressed understanding that a civil penalty will not be levied against a vessel owner for items discovered to be missing, not working, etc. Scheduled examinations are done to determine if the towing vessel meets the applicable

regulations. Scheduled examinations are conducted for both Phase I and Phase II companies. If a Phase I company's vessel meets the applicable regulations the Coast Guard examiner will apply a decal to that vessel. If a Phase II vessel meets the requirements, the Coast Guard examiner will not apply a decal to that vessel. However, if all of the company's vessels examined by the Coast Guard are in compliance with the regulations, the company will be allowed to issue their own decals. If a serious deficiency is found during a scheduled examination, the vessel should not be allowed to leave until the deficiencies are corrected.

Roles and Responsibilities

Commander Eighth Coast Guard District: The Commander Eighth Coast Guard District, through the Chief of the Marine Safety Division will be responsible for establishing program policy, and coordinating the efforts of the "M" and "O" boarding programs. The Chief of the Marine Safety Division will also be responsible for establishing program measurement requirements, and for general program administration and coordination. This will include bulk procurement of program information and Phase I and Phase II decals and dispensing this information and blocks of decals to MSO's who sponsor companies (coordinate company participation). The Chief of the Operations Division shall ensure all unscheduled towing vessel boardings are conducted using the boarding form developed as part of this program.

Commanding Officers of Sponsoring MSO's: These Commanding Officers will be responsible for program coordination and issuance of decals. This will include receiving written requests for participation, processing the requests, providing information, and establishing a sponsorship agreement. This agreement should be in writing and should detail the level of participation (Phase I or II), and number of examinations that will be conducted. The Sponsoring MSO should also coordinate with other MSO's for examinations requested and decals issued outside the sponsoring MSO zone. Commanding Officers of sponsoring MSO's will also be responsible for honoring decals and sponsorship agreements of other sponsoring MSO's as discussed below.

Commanding Officers of Non-Sponsoring MSO's: These Commanding Officers will be responsible for honoring decals and sponsorship agreements of sponsoring MSO's, except when a pollution incident or marine casualty occurs, or when a boarding is necessary in the interest of safety, environmental protection, or law or treaty enforcement. In addition, non-sponsoring MSO's will be responsible for ensuring consistency by using the boarding form developed as part of this program.

Commanding Officers of Operational Units: These Commanding Officers will be responsible for honoring decals issued by sponsoring MSO's, except in those cases when a pollution incident or marine casualty occurs, or when a boarding is necessary in the interest of safety, environmental protection, or law or treaty enforcement (this generally applies to non-river law enforcement operations). The standard 4100 Boarding Form will be used by Operational Units to document their boardings of UTVs. The 4100's should be forwarded to the Eighth District's 4100 Processing Center, whereupon civil penalty procedures will be initiated.

Participating Marine Industry Personnel: These personnel will be responsible for requesting entry into the program, assisting in development of the sponsorship agreement, and working with the sponsoring MSO's to schedule examination of their towing vessels. The marine industry will also be responsible for maintaining the condition of their equipment and their commitment to quality.

All Participants: All participants will be responsible for continuous evaluation and program feedback. In particular the sponsorship agreement constitutes a contract between the MSO and the company to continually improve their relationship and their joint commitment to safety.

Administrative Procedures

Program Entry: Companies desiring to participate shall forward a written request to the Marine Safety Office that is responsible for the area that their company headquarters is located. If the company headquarters is located in a non-sponsoring MSO zone, or where the MSO has insufficient manpower to conduct examinations, the company may request sponsorship from any sponsoring MSO in their area of operations. Companies requesting Phase II participation must have an office located in a sponsoring MSO's zone in order to facilitate the required Phase II company quality verification exams.

Phase I or Phase II: Companies must indicate in their request whether Phase I or Phase II participation is requested and receive approval from the sponsoring MSO in writing (sponsorship agreement). If Phase I approval is granted examinations of each company vessel will be conducted and decals will be issued to vessels at the completion of successful examinations. If Phase II participation is requested the MSO will conduct a quality verification exam to assess the company's safety, maintenance, and quality programs. Upon completion of this quality verification exam the MSO will determine the number or percentage of examinations of towing vessels to verify the implementation of the safety and quality programs. This number will normally be no less than ten percent of the company's operating fleet. When these examinations are completed decals will be issued to the company by the sponsoring MSO (different in color than the Phase I decals) for issuance to their vessels. Blocks of decals will be provided to all sponsoring MSO's by MSO St. Louis.

Boardings, Boarding Forms and Decal Application: Boarding procedures are standardized for all towing vessels operating in the Eighth Coast Guard District and therefore will be the same for participating and non-participating vessels. Decals will not be issued to vessels from companies who have not requested program participation. The boarding form developed for this program will be used by Marine Safety units for all scheduled and unscheduled boardings. To ensure consistency, additions or deletions shall not be made to the form. Operational units should use the standard 4100 boarding form as described on the previous page when conducting boardings. Decals issued to both Phase I and Phase II vessels must be applied to the port side pilothouse window on all vessels. Decals may be issued to vessels by the non-sponsoring MSO. This should only be done with the agreement of the sponsoring MSO, and a copy of the boarding form must be forwarded for their review.

Unsuccessful Examinations or Examinations Where Serious Deficiencies are Identified: For initial examinations the focus should clearly be on correction of deficiencies as opposed to penalties. Deficiencies found during the initial phase I exam shall be brought to the company's attention and corrected within 30 days. Once the defects are corrected a decal should be issued. However, the company will need to reapply to the sponsoring MSO for re-entry into the Cooperative Towing Vessel Examination Program if after 30 days the defects remain uncorrected. Vessels shall not be allowed to get underway if deficiencies are discovered which effects the vessel's seaworthiness, pollution prevention or safety. For initial examination of Phase II vessels the same correction period and restrictions apply. For random boardings or boardings associated with a casualty or pollution case, normal penalty procedures should be followed. In addition, a copy of the boarding report should be sent to the sponsoring MSO. In cases where serious problems which hazard the vessel or crew are identified, the sponsoring MSO shall investigate the problem to determine if disenrollment from the program is warranted.

Removal of decals, serious vessel problems, and disenrollment from the program: The sponsoring MSO can disenroll a company from either Phase I or Phase II of the Cooperative Towing Vessel Examination Program if a company breaks its commitment to quality. This is a serious step and will only be used in those cases were a company's vessels have been involved in a particularly serious incident or a pattern of incidents which reflect poor quality practices. Groundings, collisions, bridge allisions, breakaways, oil spills and injuries or deaths are just a few examples of the types of incidents that may be indicative of poor quality practices. Disenrollment from either Phase I or Phase II will be determined solely by the sponsoring MSO. The sponsoring MSO will inform the company in writing that it is being disenrolled and why. The company will be required to remove all of its vessels' decals once disenrolled and return any unused decals (if a Phase II company) to the sponsoring MSO. The sponsoring MSO will suspend the company from re-entry into the Cooperative Towing Vessel Examination Program until the company has proven it has taken action to correct its process problems. The sponsoring MSO will work closely with the company to assist in identifying and correcting its quality problems. To re-enter the program the suspended company must re-apply to it's original sponsoring MSO.

Annual Re-application: Companies enrolled in either Phase I or Phase II of the Cooperative Towing Vessel Examination Program must annually notify their sponsoring MSO to schedule the appropriate examinations. Once the request is received, the same process used for initial Phase I or Phase II entry will be used by the sponsoring MSOs.

EIGHTH COAST GUARD DISTRICT COOPERATIVE TOWING VESSEL EXAMINATION PROGRAM

QUALITY VERIFICATION CHECKLIST

Quality Verification Check List

The following is a suggested approach to examining a company's quality program. It includes items that a COTP may want to review to during the Phase II quality verification examination. Sponsoring MSO's may want to add or subtract from this list to meet their needs.

A.) VESSEL OPERATING PROCEDURES

1. Does the company have company specific vessel operating procedures?
2. Are there vessel specific operating procedures?
3. Are there procedures which ensure proper and valid documents are carried aboard the vessels?
4. Is there a list the documents which must be carried on board ?
5. Are fuel transfer procedures documented?
6. Are vessel maintenance procedures documented, including, at a minimum:
   - When maintenance is to be performed on equipment
   - Who is to perform the maintenance
   - The qualifications and training requirements for the persons responsible for maintenance
   - Procedures to correct deficiencies identified during maintenance
   - A maintenance documentation program
7. Are there procedures for inspecting the vessels, including at a minimum:
   - Persons responsible for conducting in-house inspections
   - Frequency of inspections
   - Qualifications and training required for persons responsible for conducting in-house inspections
   - Procedures to correct deficiencies found during inspections
   - Inspection record retention program
8. Are there cargo transfer and cargo handling procedures (if applicable) including, at a minimum:
   - Benzene policies
   - Vapor control policies
   - Cargoes requiring special handling
   - Lightering procedures (where applicable)

B.) SAFETY POLICY/PROCEDURES

1. Is there a company safety policy and is understood by the employees?

2. Is there a set of specific safety rules?

3. Is there personal protective gear which includes, at a minimum:
   - Usage instructions
   - Inspection procedures
   - Maintenance procedures
   - Replacement schedules

4. Are there procedures for safety and training drills?

5. Is there a safety training plan with a list of topics to be covered?

6. Are there scheduling and frequency procedures for safety and training drills?

7. Are there procedures for the documentation of safety and training drills?

8. Are there procedures for the safe use of vessel equipment such as rigging, deck machinery?

9. Are there procedures for the crew to be aware of the cargo they are carrying and it's possible hazards?

C.) ENVIRONMENTAL POLICY/PROCEDURES

1. Is there a company environmental policy?

2. Are there procedures for garbage disposal?

3. Are there procedures for proper handling of waste oil, bilge slops and used oil filters?

4. Are there procedures for the handling and disposal of hazardous waste?

5 Are there procedures for the proper use and maintenance of the marine sanitation equipment?

D.) INCIDENT REPORTING AND EMERGENCY RESPONSE PROCEDURES

1. Are there procedures for whom to contact after a marine casualty , specifically for:
   - Personal injuries
   - Deaths
   - Oil spills
   - Hazardous substance spills
   - Bridge or lock allisions
   - Collisions with other vessels

   - Groundings

2. Are there procedures for the proper completion of CG 2692 "Report of Marine Casualty or Personnel Injury"?

3. Are there procedures for responding to:
   - Personnel injuries?
   - Oil or hazardous substance spill?
   - Vessel damage due to fire or flooding?

E.) INTERNAL AUDIT AND REVIEW PROCEDURES

1. Are there procedures to examine the cause of a personnel accident which result in injury?

2. Are there procedures to examine causes of an oil spill or a hazardous material discharge?

3. Are there procedures to examine the causes of a vessel accident?

4. Are there communication procedures established to disseminate lessons learned from accidents, oil spills and injuries?

5. Are there procedures to establish safety measures to correct hazards or process problems which contributed to an oil spill, an accident or an injury?

F.) PERSONNEL POLICIES

1. Are there procedures which explain the company's and the Coast Guard's drug and alcohol programs?

2. Are there procedures for the orientation of new employees?

3. Are there training procedures which specifically outline:
   - Who is to be trained
   - The subjects in which training is given
   - The frequency of training

EIGHTH COAST GUARD DISTRICT
COOPERATIVE TOWING VESSEL
EXAMINATION PROGRAM

TOWING VESSEL BOARDING FORM

EIGHTH COAST GUARD DISTRICT
TOWING VESSEL BOARDING FORM

Vessel Name_____ Official No._____ Call Sign_____

Home Port_____Length_____Tot. Horse Pwr_____ No. of Eng____

Gross Tons_____ Net Tons_____ Year Built_____

Route: Inland_____Coastal_____Ocean____

Owner Address

_____

_____

_____

_____

Operator Address

_____

_____

_____

_____

A. Required Markings & Documents:

Item	Requirement	Regulation
1.	O Official number clearly visible on interior structural part of hull?	46 CFR 67.121
2.	O Original Marine Document produced if at least 5 net tons? Expires:_____	46 CFR 67.161(a)
3.	O Name and hailing port clearly displayed	46 CFR 67.123(a)
4.	O Valid radio station license?	47 CFR 80.25
5.	O Vessel log of required tests and inspections?	33 CFR 164.80(b)
6.	O Operator license?	46 CFR 15.810
7.	O Restricted radio operator's license?	33 CFR 164.72(a)(3)

B. Lifesaving Equipment:

1	O Serviceable CG approved PFD's for each person aboard	46 CFR 25.25-5
	_ All lifesaving equipment marked showing CG approval numbers	46 CFR 25.25-7
	_ Wearable lifesaving equipment readily accessible	46 CFR 25.25-9(a)
	_ Work vests CG approved? (CG approval # 160.053 & 160.064)	46 CFR 26.30-05

TOWING VESSEL BOARDING FORM

Item	Requirement	Regulation

B. Lifesaving Equipment Cont'd:

	_ Work vests stowed separately from life preservers	46 CFR 26.30-10
	_ Retroreflective material for each PFD, Buoyant vest, or marine buoyant vest	46 CFR 25.25-15
2. O	Ring buoy (> 20'), one (1) CG approval # 160.050	46 CFR 25.25-5(d)
	_ Throwable lifesaving equipment immediately available	46 CFR 25.25-9(b)
	_ EPIRB (High ocean low vessels only)	46 CFR 25.26-20

C. Navigation Safety:

1. O	Navigation Publications. (see explanation in the July 3, 1998 Final Rule)	
	_ Marine Charts of the area to be transited (Currently Corrected)	33 CFR 164.72(b)(1)
	_ Coast Guard Light List	33 CFR 164.72(b)(3)
	_ Coast Guard Local Notice to Mariners	33 CFR 164.72(b)(3)
	_ US Coast Pilot (not req'd for Western Rivers towing vessels)	33 CFR 164.72(b)(3)
	_ Tide tables (not req'd for Western Rivers towing vessels)	33 CFR 164.72(b)(3)
2. O	Navigation Equipment (see explanation in the July 3, 1998 Federal Register Final Rule)	
	_ Marine Radar	33 CFR 164.72(a) 1)
	_ Searchlight	33 CFR 164.72(a)(2)
	_ VHF-FM Radio vitability to separately monitor Ch. 13 (or 67 on the LMR) and Ch. 16	33 CFR 164.72(a)(3)
	_ Magnetic Compass or Swing Meter	33 CFR 164.72(a)(4)
	_ An Echo Depth Sounding Device (not req'd for Western Rivers towing vessels)	33 CFR 164.72(a)(5)
	_ Electronic position fixing device (not req'd for Western Rivers towing vessels)	33 CFR 164.72(a)(5)
3. O	Navigation Lights (masthead, side, towing, and stern lights)	33 USC 2023(a)
	(Inland Rule 23 - underway without tow, Inland Rule 24(f) Underway with tow)	
	_ Navigation Side Lights fitted with block screens (<20M/65.6')	33 CFR 84.09
	_ Towing: Two amber towing lights at stern	33 USC 2024(d)
4. O	Efficient whistle and fog bell (> 39.4')	

TOWING VESSEL BOARDING FORM

Item	Requirement	Regulation

D. MARPOL Annex V - Garbage Pollution Prevention:

1. O	MARPOL Placard(s) posted (9" X 4" with > 1/8" letters(Vsls >26')	33 CFR 151.59
	Any written procedures prohibiting discharge of materials listed in Annex A of 33 CFR 151 (Not required by regulation - Good Practice)	
	_ Is vessel complying with disposal of plastics, grease, rags, glass, metals, etc. 46 CFR 25-50-1 and Annex A Table of 33 CFR 151	33 CFR 88.05

E. Marine Sanitation Device:

1. O	Certified Marine Sanitation Device installed Type:_____.	33 CFR 159.7
	_ MSD overboard discharge valve installed and closed	33 CFR 159.53(c)
	_ Are onboard sewage pump and arrangements adequate	33 CFR 159.7

F. Fire Fighting Equipment:

1. O	All required fire extinguishers CG or UL approved	46 CFR 25.30-10
	_ All required fire extinguishers in serviceable condition	46 CFR 25.30-5
	_ All required fire extinguishers have metallic or mylar name plate attached?	46 CFR 25.30-10(d)
	_ Minimum number portable fire extinguishers (26' - < 40' = two B-I, 40' - 65' = three B-I, Note: One B-II = two B-I)	46 CFR 25.30-5
	_ Additional B-II's for each 1000 BHP of main engines up to six	46 CFR 25.30-20(b)(2)
	_ One B-III or fixed fire extinguishing system in engine room (>300 G.T.)	46 CFR 25.30-20(b)(2)

G. Pollution Prevention:

1. O	Prohibited Discharge Warning Placard (5" X 8") posted (>26')	33 CFR 155.450
	_ Is machinery or other oil drained to the bilges	33 CFR 155.770
2. O	Fixed or portable means to discharge oily bilge slops	33 CFR 155.410
3. O	Certificate of Financial Responsibility (COFR) (>300 G.T.)	33 CFR 130.1 & 3
4. O	Is fuel oil discharge containment adequate for oil transfer	33 CFR 155.320
5. O	Oily waste/slop retention system & disposal (not required if essentially dry bilges)	33 CFR 155.330
	_ Bilge slop system adequate (fixed piping, flange, etc.)	33 CFR 155.410
	_ Oil transfer hose (if on board or if applicable)	33 CFR 155.800
6. O	"Person-in-Charge" instructed in duties and FWPCA laws and regs	33 CFR 155.710(e)(2)
	_ Records contain required info (person-in-charge, lease info)	33 CFR 155.820
7. O	Oil Transfer Procedures available	33 CFR 155.740
	_ Contents of Oil Transfer Procedures meet requirements	33 CFR 155.750

TOWING VESSEL BOARDING FORM

Item	Requirement	Regulation

H. Miscellaneous:

1. O Properly licensed operator(s) for towing vessels >26 FT, endorsed for route, w/ radar and. 46 CFR 15.810
2. O Operator aware of marine casualty reporting requirements 46 CFR 4.05-1
3. O Company participates in a drug testing program 46 CFR 16.205

I. General Housekeeping, Including Machinery Spaces:

1. O Living spaces are clean, no build up of debris nor evidence of smoking in bed.
DESCRIBE ANY UNSAT CONDITIONS NOTED AND IF CORRECTIONS WERE MADE:

_____

_____

2. O Galley cleanliness and refrigeration - SAT or UNSAT.
IF UNSAT NOTE THE PROBLEM(S) AND IF CORRECTIONS WERE MADE.

_____

_____

3. O Main deck stanchions and chains

4. O Fuel tank vents are covered with flame screens

5. O Machinery spaces condition: guards in place around all moving machinery, piping is in good condition, no hazards noted. NOTE ANY PROBLEMS FOUND IN MACHINERY SPACES AND IF THEY WERE CORRECTED:

_____

_____

6. O Electrical systems: no jury rigged wiring, guards and globes cover exposed lights in work or external areas, electrical boxes are in satisfactory condition, switches are covered
NOTE ANY PROBLEMS FOUND WITH ELECTRICAL SYSTEMS AND IF THEY WERE CORRECTED:

_____

_____

7. O Steering system: Observe operation and note any problems with hydraulic lines or leakages.

_____

_____

TOWING VESSEL BOARDING FORM

J. Examiners Comments:

Examiner's overall impression of the vessel's appearance and the crew's behavior. Include any suggestions made by the crew as well as any positive comments derived from this examination:

_____

_____

_____

_____

_____

_____

_____

K. Unscheduled Boarding Deficiencies:

(COMPLETE THIS SECTION ONLY IF CONDUCTING AN UNSCHEDULED BOARDING) As a result of the examination of your vessel, the following deficiencies were noted and may be submitted for civil penalty action (Be specific):

_____

_____

_____

_____

_____

_____

_____

L. Scheduled Voluntary Examination Deficiencies:

(COMPLETE ONLY IF CONDUCTING A SCHEDULED VOLUNTARY DOCKSIDE EXAMINATION) As a result of the examination of your vessel, the following deficiencies were noted that prevented the issuance of the Cooperative Towing Vessel Examination Decal:

_____

_____

_____

_____

_____

_____

_____

TOWING VESSEL BOARDING FORM

When these items have been corrected, please call to schedule a follow-up examination to receive the the Cooperative Towing Vessel Examination Program Decal. You should keep this letter on board your boat.

Congratulations! Your vessel is in full compliance with the U. S. Coast Guard's Uninspected Towing Vessel Safety regulations for the operations described above. As evidence of this, Uninspected Towing Vessel Decal number_____ has been affixed to your vessel. You are urged to maintain the high standards required to receive this decal. If you sell the boat, you should remove the decal. Any suggestions you may have to improve the program can be provided to the Examiner or you may write them on the reverse of this form.

Examiner's Name/Rank/Rate_____Unit_____

Exam Location_____Date _____

Exam Hours: Time Exam Started_____ Time Exam Completed:_Travel Time: _____

X_____ X_____

Signature of Company Representative Signature of Boarding Officer

EIGHTH COAST GUARD DISTRICT COOPERATIVE TOWING VESSEL EXAMINATION PROGRAM

TOWING VESSEL SAFETY REQUIREMENTS

Towing Vessel Safety Requirements

Overview

This document applies to U.S. uninspected towing vessels (UTVs) that do not carry passengers or freight for hire. It has been developed to assist UTV owners and operators and Coast Guard boarding officers during scheduled examinations or random boardings of UTVs. It is not meant to replace the federal regulations. For precise language and exemptions to various regulations, it is recommended that Title 46, Code of Federal Regulations (CFR) SubChapter C and other CFR's, which set forth minimum requirements for UTVs, be consulted. UTV operators must meet Coast Guard licensing requirements as well.

Each section corresponds to the checklist, which is attached to the back of this booklet. For example, section 1 of this document corresponds to section 1 of the checklist.

Abbreviations

Listed are abbreviations found in this document:

USC: Title 46, United States Code
CFR: Code of Federal Regulations
CG: U.S. Coast Guard
COTP: USCG, Captain of the Port
OCMI: USCG, Officer-in-Charge Marine Inspection
MSD: Marine Sanitation Device
MSO: Marine Safety Office
PFD: Personal Flotation Device
UTVs: Uninspected Towing vessels

Copy of Regulations

You may purchase a copy of these regulations by calling the Government Printing Office at (202) 512-1800 or order by facsimile and credit card at (202) 512-2233. Request Title 46, CFR Parts 1 to 40.

Section A: Required Markings and Documentation

Certificate of Documentation

A UTV of at least five net tons that engages in domestic or coastwise trade must have a Certificate of Documentation (COD) onboard bearing a valid endorsement for the activity in which it is engaged. 46 CFR 67.7

UTVs Over 5 Net Tons

UTVs whose route is from point "A" in the U.S. to point "B" in the U.S., or returning to point "A" without leaving U.S. territorial waters must hold a COD documented for coastwise trade. 46 CFR 67.15

Endorsements for CODs' are valid for 1 year. Prior to expiration, the owner must renew by executing an original Notice of Expiration (CG-1280) or Final Notice of Expiration (CG-1280-B) certifying that information contained in the COD and endorsements remain accurate and that the COD has not been wrongfully withheld, lost, or mutilated. The forms and information for renewal can be obtained through the Coast Guard's National Vessel Documentation Center at 1-800-799-8362. The owner will receive a renewal decal which must be affixed to the COD to prove that the COD has been renewed. 46 CFR 67.163

Vessel Markings

Vessel markings in accordance with 46 CFR 67.123:

The name of the UTV must be marked on some CLEARLY visible exterior part of the port and starboard bow and the stern. The hailing port must be marked on some clearly visible exterior part of the stern.

For UTVs with a square bow, the name must be marked on some clearly visible exterior part of the bow in a manner to avoid obliterating. The name and hailing port must be marked on some clearly visible exterior part of the stern.

These markings, which may be made by the use of any means and materials which result in durable markings, must be made in clearly legible letters of the Latin alphabet or Arabic or Roman numerals not less than four inches high.

Tests and Inspections

Required pre-voyage or crew change tests and inspections in accordance with 33 CFR 164.80(b):

The owner, master, or operator of each towing vessel of 1,600 GT or more shall ensure that the following tests of equipment occur at the frequency required by 33 CFR 164.25, and that the following inspections of gear occur before the vessel embarks on a voyage of more than 24 hours, or when each new master or operator assumes command:

Navigational equipment: Tests of onboard equipment as required by 33 CFR 164.25.

Terminal gear: Visual inspection of tackle; of connections of bridle and towing pendant, if applicable; of chafing gear; and of the winch brake, if installed.

Valid Radio Station License

Valid radio station license in accordance with 47 CFR 80.25:

All stations in the maritime services must be licensed by the FCC.

Licenses for ship stations in the maritime services will normally be issued for a term of ten years from the date of original issuance, major modification, or renewal.

Restricted Operator's License

Restricted operator's license in accordance with 33 CFR 164.72(a)(3):

Each U.S. towing vessel of 26 feet (about 8 meters) or more in length, except a public vessel, must hold a ship-radio-station license for radio transmitters (including radar an EPIRBs), and each operator must hold a restricted operator's license or higher.

Section B: Lifesaving Equipment

Personal Floatation Devices or Life Preservers

UTVs' less than 40 ft long must have at least one CG approved TYPE I PFD, TYPE II buoyant vest, or TYPE III buoyant device of a suitable size for each person. UTVs 40 ft long or more must have at least one CG approved TYPE I PFD of a suitable size for each person. Kapok and fibrous glass life preservers without plastic covered pad inserts are unacceptable. UTVs may substitute a CG approved exposure suit for a life preserver, buoyant vest, or buoyant device. 46 CFR 25.25-5(b), (c) & (e)

Approved commercial hybrid PFDs may be substituted for life preservers if:

It is worn when the UTV is underway and the intended wearer is not within an enclosed space;

It is used in accordance with the marked conditions on the PFD and in the owner's manual; and

Labeled for use on uninspected commercial vessels.

Lifesaving equipment required to be worn must be readily accessible and equipment designed to be thrown must be immediately available. 46 CFR 25.25

Each life preserver, buoyant device, and buoyant vest must have approved Type I retroreflective material with at least 200 sq. cm. (31 sq. in.) of material on the front, at least 200 sq. cm. on the back, and, if reversible, at least 200 sq. cm. on each reversible side. The material attached on each side must be divided equally between the upper quadrants of the side and as close as possible to the shoulder area. 46 CFR 25.25-15

On Ocean or Coastwise voyages each life preserver and buoyant device or vest must have a CG approved PFD light attached to the front shoulder area. 46 CFR 25.25-13

If a PFD light has a non-replaceable power source, it must be replaced on or before expiration date.

If the light has a replaceable power source, the power source must be replaced before its expiration date.

Work Vests

When carried on UTVs, approved buoyant vests shall be stowed separately from the regular stowage of required lifesaving equipment. 46 CFR 26.30-10

The lifesaving equipment must be CG approved and in serviceable condition. 46 CFR 25.25-11

Ring Life Buoy

Each UTV 26 feet or longer in length must have at least one CG approved throwable ring life buoy with a minimum outside diameter of 20 inches. 46 CFR 25.25-5(d)

Emergency Position Indicating Radio Beacon (EPIRB)

A UTV 36 ft or more in length, in accordance with 46 CFR 25.26-20, shall not be operated **on the high seas** (operates beyond three miles unless it has:

A float-free, automatically activated Category I 406 Mhz EPIRB stowed in a manner so that it will float free if the vessel sinks; or

Until Feb. 1, 1998, a 121.5/243.0 Mhz EPIRB made after Oct. 1, 1988 and installed before Apr. 27, 1993. It must be a Class A EPIRB or B EPIRB that is watertight, self-buoyant, and stable in a floating position to properly transmit a distress signal.

A UTV less than 36 ft in length, or 36 ft or more with a builder's certificate saying it is built with sufficient inherently buoyant material to keep it afloat, shall, in accordance with 46 CFR 25.26-20(b), not be operated on the high seas unless it has in a readily accessible location at or near the principal steering station:

A manual activated Category 2 406 Mhz EPIRB;

A float-free, automatically activated Category 1 406 Mhz EPIRB; or

Until Feb. 1, 1998, a 121.5/243.0 Mhz EPIRB w/same requirements as stated for a UTV 36 ft long or more.

Section C: Navigation Safety

Pilot House Equipment

Equipment, Charts or Maps, and Publications of Towing Vessels of 12 Meters or More in Length

Equipment	Western Rivers	US Nav. Waters Other than Western Rivers	Waters Seaward of Nav Waters
Radar	YES	YES	YES
Searchlight	YES	YES	YES
VHF-FM Radio	YES	YES	YES
Magnetic Compass	YES, may carry a swing meter in lieu of a magnetic compass	YES	YES
Echo Depth Sounding Device	NO	YES	YES
Electronic Position-Fixing Device	NO	NO	YES
Charts or Maps	Large enough scale & current edition or currently corrected edition	Large enough scale & current edition or currently corrected edition	Large enough Scale & currently corrected edition
General Publications	1. USCG Light List 2. Notices to Navigation or Local Notices to Mariners 3. River-current Tables	1. USCG Light List 2. Local Notices to Mariners. 3. Tidal-current Tables 4. Tide Tables 5. U. S. Coast Pilot	1. USCG Light List 2. Local Notices to Mariners. 3. Tidal-current Tables 4. Tide Tables 5. U. S. Coast Pilot

Information from the above chart can be found in the 3 July 1996 Federal Register: 33 CFR Part 164 Navigation Safety Equipment for Towing Vessels; Final Rule

In addition to the above, the operator of each UTV 12 meters long or more shall carry a copy of the Inland Navigation Rules, as per 33 CFR 88.05

Navigation Lights & Sound Signals

A UTV underway, greater than 12 meters should display, in accordance with COLREGS, Rule 24:

Two white masthead lights ahead at an arc of 225 degrees;

Red and green sidelights, from dead ahead at an arc of 112.5 degrees;

White stern light: astern at an arc of 135 degrees;

Towing light (if towing ahead): a yellow light with the same characteristics as a stern light; and

UTVs less than 12 meters may substitute one all around white light for the white mast head and stern lights.

NOTE: Specific arrangements for navigation lights and day signals are required when an UTV is in a towing mode. It is recommended that the Inland and International Navigation Rules be reviewed.

Sidelights on UTVs 20 meters or more in length shall be fitted with mat black inboard screens. On UTVs less than 20 meters, sidelights, if necessary to meet the arc required of the light, shall be fitted with black mat inboard screens. A combined lantern, for vessels less than 20 meters using a single vertical filament and a narrow division between the red and green sectors, external screens need not be fitted. 33 CFR 84.09

An efficient bell and whistle is required in accordance with the COLREGS, Rule 33:

UTVs less than 12 meters in length must have a means of making an efficient sound signal.

UTVs of 12 meters and more in length must have a whistle and bell:

UTVs of 12 to 20 meters in length must have a bell of at least 200 mm (7.9 inches) in diameter. 33 CFR 86.23

UTVs over 20 meters in length must have a bell of at least 300 mm (11.8 inches) in diameter. 33 CFR 86.23

Note: The bell does not have to be mounted, however, it must be on board the vessel and accessible.

Section D: MARPOL ANNEX V Garbage Pollution Prevention

General Requirements

No person may discharge garbage into U.S. navigable waters. 33 CFR 151.66

Garbage Placards

Each placard must be at least 9 inches wide by 4 inches high, made of durable material, and with letters at least 1/8" high. The placard must notify the reader of the following in accordance with 33 CFR 151.59 (d):

Discharge of plastic or garbage mixed with plastic into any waters is prohibited.

Discharge of garbage is prohibited in U.S. navigable waters and in all other waters within three nautical miles of the nearest land.

Discharge of dunnage, lining, and packing material that float is prohibited within 25 nautical miles of the nearest land.

Other unground garbage may be discharged beyond 12 nautical miles from the nearest land.

Other garbage ground to less than one inch may be discharged beyond three nautical miles of the nearest land.

Violators are liable for civil penalties up to $25,000, fines up to $50,000, and imprisonment for up to five years per violation.

Section E: Marine Sanitation Devices

General Requirements

No UTV with an installed toilet may operate in U.S. navigable waters without a USCG certified Type I, II or III MSD which includes any equipment for installation on board which designed to receive, retain, treat or discharge sewage, and any process to treat sewage. 33 CFR 159.3 & .7(a)

> Type I, MSD, means a device that, under the test conditions described in 33 CFR 159.123 and 159.125, produces an effluence (discharge) having a fecal coliform bacteria count not greater than 1,000 per 100 milliliters and no visible solids.
>
> Type II, MSD, means a device that, under the test conditions described in 33 CFR 159.126 and 159.126a, produces an effluence having a fecal coliform bacteria count not greater than 200 per 100 milliliters and suspended solids not greater than 150 milligrams per liter.
>
> Type III, MSD, means a device that is designed to prevent the overboard discharge of treated or untreated sewage or waste derived from sewage. Holding tanks can be discharged over the side no closer than three nautical miles from land.

NOTE: If a Type III MSD has a "Y" valve which allows discharge over the deck to a facility or through the hull over the side, it must be secured in U.S. navigable waters so as to prohibit accidental discharges overboard inside three nautical miles from land.

Each Type I or II MSD must have an identification placard attached. 33 CFR 159.55

MSDs' must have placards which provide operating instructions, safety precautions, and warnings pertinent to the MSD. The letters on the placard must be at least one eighth of an inch. 33 CFR 159.59

MSD Systems

After January 30, 1980, new UTVs with installed toilet facilities must be equipped with a USCG certified Type II or III MSD.33 CFR 159.7(b)

> A new UTV includes any UTV, the construction of which is initiated on or after January 30, 1975.
>
> An exception is an operable Type I MSD installed before January 31, 1980 and is properly labeled.
>
> After January 30, 1980, existing UTVs (not new UTVs) with installed toilet facilities must be equipped with a Type II or III MSD. 33 CFR 159.7(c)
>
> An exception is an operable Type I MSD installed before January 31, 1978 and is properly labeled.

Note 1: Any UTV 65' or under in length may utilize a properly labeled and functioning Type I MSD.

Note 2: Portable toilets or "porta-potties" are not considered installed toilets and are not subject to MSD regulations.

Section F: Fire Fighting Equipment

General Requirements

All fire extinguishers and fixed fire extinguishing systems shall be CG approved or UL listed for marine use and marked as such. 46 CFR 25.30-5(b)

All required hand portable fire extinguishers and semi-portable fire extinguishing systems are "B" type; i.e. suitable for extinguishing fires involving flammable liquids, grease, etc. 46 CFR 25.30-10(b)

All motorboats (vessels 65 ft in length and smaller) shall carry at least the minimum fire extinguishers as set forth in the table below:

Vessel Length		Minimum Number of B-I Hand Portable Fire Extinguishers note***	
Equal or Over	Under	No fixed FF in Machinery Space	Fixed FF in Machinery Space
-	16 feet	1	0
16 feet	26 feet	1	0
26 feet	40 feet	2	1
40 feet	65 feet & under	3	2

*note*** One B-II hand portable extinguisher may be substituted for 2 B-I hand portable extinguishers*

This table was reproduced from 46 CFR 25.30-30(a)(1)

All motor vessels (vessels over 65' in length) shall carry at least the minimum fire extinguishers as set forth in the table below:

Gross Tonnage		Minimum number of B-II hand portable fire extinguishers
Over	Not Over	
	50	1
50	100	2
100	500	3

This table was reproduced from 46 CFR 25.30-20(b)(1)

Note: In addition to the hand portable fire extinguishers required by 46 CFR 25.30-20(b)(1), a B-II portable fire extinguisher is required for each 1000 B.H.P. of the main engines or fraction thereof. However, not more than 6 such extinguishers need to be carried.

All hand portable and semiportable fire extinguishers shall have a permanently attached metallic name plate with name of item, rated capacity, name & address of person or firm for whom approved, and identifying mark of manufacturer. 46 CFR 25.30-10(d)

On motor vessels over 300 gross tons either one Type B-III semiportable fire extinguishing system shall be fitted, or alternatively, a fixed fire extinguishing system shall be fitted in the machinery space.

Fixed fire extinguishing systems will be a CG approved carbon dioxide type, designed and installed in compliance with the requirements of 46 CFR 76.15. 46 CFR 25.30-15

Section G: Pollution Prevention

General Requirements

UTVs 26 ft or more in length must have a placard posted in a machinery space or a bilge control station in accordance with 33 CFR 155.450. The placard must be at least 5 by 8 inches, made of durable material, and shall state:

DISCHARGE OF OIL PROHIBITED

> ***The Federal Water Pollution Control Act prohibits the discharge of oil or oily waste into or upon the navigable waters of the U.S. or the waters of the contiguous zone if such discharge causes a film or sheen upon or a discoloration of the surface of the water or causes a sludge or emulsion beneath the surface of the water. Violators are subject to a substantive civil penalty and/or criminal sanctions including fines & imprisonment.***

No person may intentionally drain oil or hazardous materials from any source into the bilge. 33 CFR 155.770

No person may operate a U.S. non-oceangoing UTV in U.S. navigable waters unless it has the capacity to retain on board all oily mixtures and is equipped to discharge the oily mixtures to a reception facility. 33 CFR 155.330

Bilge Slops Retention

Oceangoing UTVs shall have the capacity to retain all oily mixtures on board and be equipped to discharge to a reception facility or be equipped with a CG approved oily-water separator. An oily residue tank is not required on these UTVs. 33 CFR 155.350

A non-oceangoing UTV may not be operated in U.S. navigable waters, as stated in 33 CFR 155.410, unless:

> It has at least one pump to discharge oily mixtures from a fixed piping system to a reception facility;
>
> Piping system has at least one outlet accessible from the vessel weather deck.
>
> Each outlet has a shore connection that meets the specifications of 33 CFR 155.430 or the UTV has at least one portable adapter that meets the same specifications and fits the required outlets; and
>
> The outlet has a stop valve on the weather deck.

The previous requirements do not apply to UTVs that have a CG approved oily-water separator.

An oceangoing UTV over 100 g.t. may not operate on U.S. navigable waters, as stated in 33 CFR 155.420, unless:

> It has at least one pump to discharge oily mixtures from a fixed piping system to a reception facility;
>
> The piping system has at least one outlet that is accessible from the vessel weather deck;

> Each outlet has a shore connection that meets the specifications of 33 CFR 155.430 or the UTV has at least one portable adapter that meets the same specifications and fits the required outlets;
>
> The UTV has a means on the weather deck near the discharge outlet to stop each oily waste pump; and
>
> The outlet has a stop valve on the weather deck.

The above requirement does not apply to a UTV that has a CG approved oily-water separator.

Fuel Oil Discharge Containment

In accordance with 33 CFR 155.320, fuel oil and lubricating oil discharge containment for UTVs of 100 g.t. or more must:

Have a fixed container or enclosed deck area under or around each fuel oil or lubricating oil tank vent, overflow, and fill pipe that has a capacity of at least one-half barrel capacity; or

> Equip each oil tank vent, overflow, and fill pipe during oil transfer operations with a portable container of at least a 5 U.S. gal. capacity; or
>
> If the UTV has fittings for which containment is impractical, use an automatic back pressure shut off nozzle.

Oil Transfer Hoses

Each oil or hazardous material transfer hose, for UTVs over 100 g.t., must meet the following requirements of 33 CFR 154.500:

> The minimum design burst pressure must be at least 600 PSI and at least four times the sum of the pressure of the relief valve setting, plus the static head pressure of the transfer system at the point where the hose is installed.
>
> The MAWP must be at least 150 PSI and more than the sum of the pressure of the relief valve setting (or maximum pump pressure when no valve is installed) plus the static head pressure of the transfer system at the point where the hose is installed.
>
> Each nonmetallic hose must be usable for oil and hazardous material service.
>
> Each hose assembly must either have full threaded connections; flanges that meet standard B.16.5, Steel Pipe Flanges and Flange Fittings; or standard B.16.4, Brass or Bronze Pipe Flanges, of the American National Standards Institute (ANSI); or quick-connect couplings acceptable to the CG.

Each hose must be marked with:

> Name of products for which the hose may be used or, for oil products, the words "oil service";
>
> Maximum allowable working pressure (MAWP);
>
> Date of manufacturer; and

Date of latest test required by 33 CFR 156.170; Nonmetallic transfer hoses must not have soft spots, unrepaired bulges, or defects which would permit the discharge of product through the hose material; no gouges or cuts penetrating the first layer of the hose; no internal deterioration; and not burst, bulge, or leak under static liquid pressure of at least 1.5 times the MAWP.

Each hose used to transfer fuel to a UTV that has a fill pipe for which containment cannot practically be provided must be equipped with an automatic back pressure shut off nozzle.

Oil Transfer Procedures

For UTVs of **100 g.t. or more** the person in charge of an oil transfer must have been instructed by the operator in his/her duties and federal laws and regulations that apply to the vessel in accordance with 33 CFR 155.710(a)(4)

For UTVs with a capacity of **250 bbls (approx. 10,500 gals) or more of oil or hazardous material**, transfer procedures are required for vessels transferring to or from the vessel or from tank to tank. These procedures must be readily available and on board. See 33 CFR 156 and 33 CFR 155.720

A UTV, with a capacity of **250 or more barrels of oil or hazardous materials**, conducting transfer operations between sunset and sunrise must have deck lighting that adequately illuminates all transfer work areas in accordance with 33 CFR 155.790

The UTV operator shall keep a written record available for inspection by the CG, in accordance with 33 CFR 155.820 indicating:

The name of each person currently designated as a person in charge of transfer operations;

The date and result of most recent test and inspection of items as required by 33 CFR 156.170;

The hose information required by 33 CFR 154.500, unless that information is marked on the hose; and

The "Declaration of Inspection" as required by 156.150(f).

Certificate of Financial Responsibility (COFR)

All UTVs' **over 300 g.t.** are required to have Certificates of Financial Responsibility in accordance with 33 CFR 130.1

Section H: Miscellaneous

Personnel Licensing

Every UTV at least 26 feet in length must be under the direction and control of an individual licensed by the Coast Guard as per 46 CFR 15.810

The following rules apply for operators of UTVs in accordance with 46 CFR 15.910:

An individual of 21 years or more of age holding a license as master of inspected, self-propelled vessels, or a license as mate or pilot of inspected, self-propelled vessels of not more than 200 gross tons, is authorized to serve as operator of an UTV.

A licensed mate authorized to serve as operator of an UTV may only be in command on domestic routes.

An individual of 19 years or more of age holding a license which authorizes service as mate of vessels of not more than 200 gross tons is authorized to serve as second-class operator of UTVs'.

Note: Towing vessels under 200 g.t. in the mineral and oil exploitation industry are not subject to the provisions relating to licensed operators.

Each licensed individual serving on a radar-equipped UTV of 26 feet or more in length shall hold a valid endorsement as radar observer or valid certificate from a radar-operation course (if his or her license is dated **before** February 15, 1995). 46 CFR 15.815

An individual may not serve in a position in which the individual is required to hold a license unless the individual holds a valid license authorizing service in the capacity in which the individual is employed and the individual serves within any restrictions placed on the license as per 46 CFR 15.401.

You must have the original of your license in your possession and immediately available when operating a UTV. 46 CFR 26.20-1(a)

Merchant Mariners Documents

On UTVs over 100 g.t., not on a Rivers route, all licensed personnel and crewmembers shall hold valid Merchant Mariners Documents.

Verbal Notice of Marine Casualty

The following applies to UTVs' in accordance with 46 CFR 4.05-1:

Immediately after addressing safety concerns, the owner, master, operator, or person in charge shall notify the nearest CG MSO or Group whenever a vessel is involved in a marine casualty, i.e.:

An unintended grounding, or an unintended strike of a bridge or bridge fendering system;

An intended grounding or an intended strike of a bridge that creates a hazard to navigation, the environment, or safety of a vessel;

Loss of main propulsion, primary steering, etc. that reduces the maneuverability of the vessel;

An occurrence adversely affecting the seaworthiness or fitness including fire; flooding, or failure of/damage to fire fighting, lifesaving, & auxiliary power equipment; or bilge-pumping systems;

A loss of life;

Injury requiring professional medical treatment and, for a crewmember, that renders the individual unfit to perform his or her routine duties; or

Occurrence causing property damage above $25,000 including cost of labor and material but not cost of salvage, gas-freeing, dry-docking, or demurrage.

Written Notice of Marine Casualty

In addition to the verbal report, the owner, master, operator, or person in charge shall, within five days, file a written report with the nearest MSO on form CG-2692: Report of Marine Accident, Injury or Death and, as necessary, be supplemented by form CG-2692B: Report of Required Chemical Drug & Alcohol Testing following a Serious Marine Incident. 46 CFR 4.05-10

Drug Testing Program

Pre-employment Testing

No marine employer shall engage or employ any individual to serve as a crewmember unless the individual passes a chemical test for dangerous drugs for that employer. This may be waived if the individual can satisfactorily provide evidence that the individual either passed a chemical test for dangerous drugs within the past six months with no subsequent positive tests or during the previous 185 days been subject to random testing for at least 60 days and did not fail or refuse to participate in a chemical test for dangerous drugs. 46 CFR 16.210

Periodic Testing

Whenever a physical examination is required for an individual by this SubChapter, a chemical test for dangerous drugs must be included as a part of the physical examination. 46 CFR 16.220

Random Testing

Marine employers shall establish programs for the chemical testing for dangerous drugs on a random basis of their crewmembers. Crewmembers shall be tested on a random basis at an annual rate of not less than 50%. Random selection means that all crewmembers have an equal chance of selection. 46 CFR 16.230(b)

Reasonable Cause Testing

Employers shall require any crewmember on a UTV who is reasonably suspected of using a dangerous drug to be chemically tested for dangerous drugs. The employer's decision must be based on a reasonable and articulate belief that the individual has used a dangerous drug based on direct observation. Where practicable, this belief should be based on observations by two persons in supervisory positions. 46 CFR 16.250

Serious Marine Incident Testing

The marine employer shall ensure that all persons directly involved in the incident are chemically tested for dangerous drugs and alcohol in accordance with the requirements for mandatory chemical testing. 46 CFR 16.240

A serious marine incident includes the following events involving a UTV:

A marine casualty or accident which is required to be reported to the CG and results in any of the following:

One or more deaths;

Injury requiring professional medical treatment and, for a crewmember, that renders the person unfit to perform his or her routine duties;

Damage to property in excess of $100,000;

Actual or constructive total loss of any vessel subject to inspection; or

Actual of constructive total loss of any self-propelled vessel, not subject to inspection, of 100 gross tons or more.

A discharge of oil of 10,000 gallons or more into U.S. navigable waters.

A discharge of a reportable quantity of a hazardous substance into U.S. navigable waters or a release of a reportable quantity of a hazardous substance into the environment of the United States.

Failure of a Drug Test

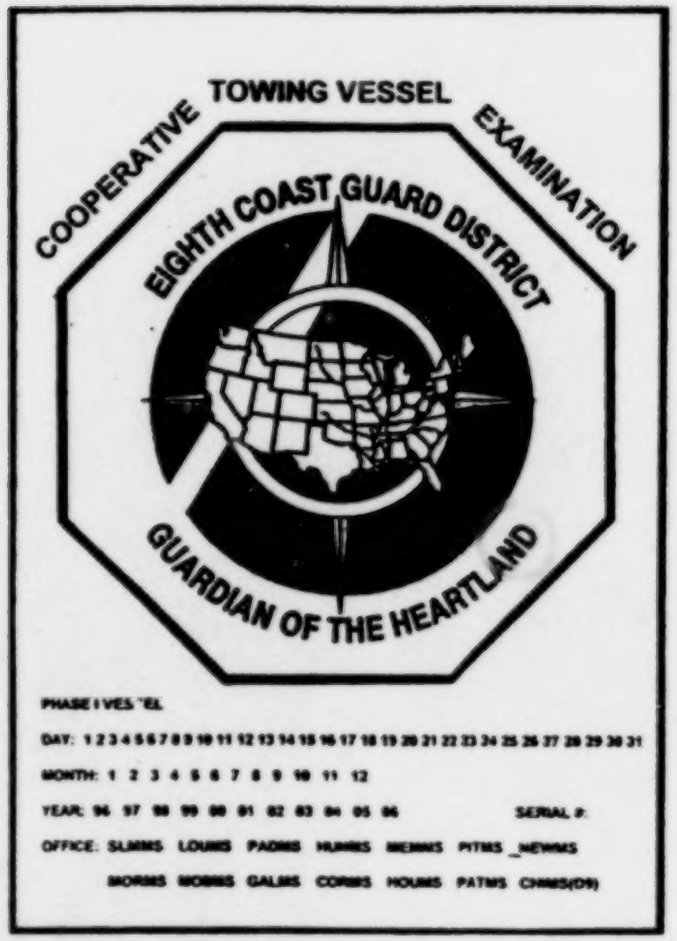
If an individual holding a license, certificate of registry, or merchant mariner's document fails a chemical test for dangerous drugs, the individual's employer or prospective employer shall report the test results in writing to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI). The individual shall be denied employment as a crewmember or removed from duties which directly affect the safe operation of the vessel as soon as practicable and shall be subject to suspension and revocation proceedings against his or her license, certificate of registry, or merchant mariner's document as per 46 CFR 16.201

If an individual who does not hold a license, merchant mariner's document, or certificate of registry fails a chemical test for dangerous drugs, the individual shall be denied employment as a crewmember or removed from duties which directly affect the safe operation of the vessel as soon as possible. 46 CFR 16.201

Employers shall maintain records of chemical tests which the Medical Review Officer reports as *positive* for a period of five years. Records of tests reported as *negative* shall be retained for one year in accordance with 46 CFR 16.260

EIGHTH COAST GUARD DISTRICT
COOPERATIVE TOWING VESSEL
EXAMINATION PROGRAM

DECAL DESIGN


TOWING VESSEL
COOPERATIVE
EXAMINATION
EIGHTH COAST GUARD DISTRICT
GUARDIAN OF THE HEARTLAND
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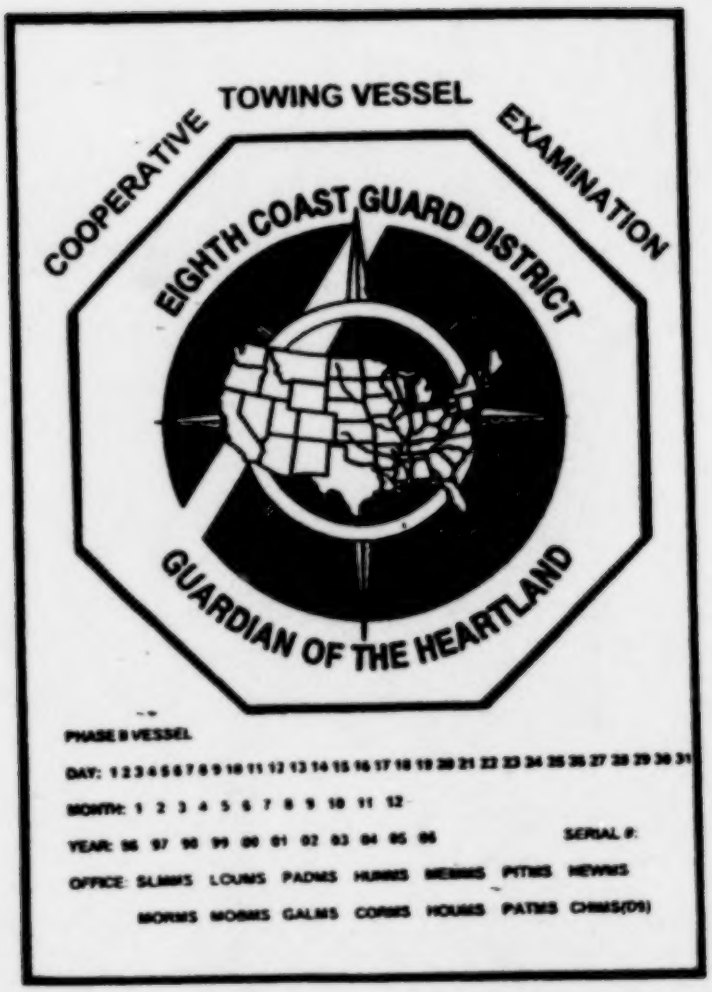
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